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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1967

No. 891

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor, PETITIONER

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION,
LOCAL 6

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 6, 1968
CERTIORARI GRANTED JANUARY 29, 1968

Supreme Court of the United States

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W. WILLARD WIRTZ, Secretary of Labor,
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v.

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LOCAL 6

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INDEX

	Page
Extracts From Docket Entries	1
Complaint	3
Notice of Motion	7
Defendant's Motion to Dismiss	8
Affidavit of James Marley	9
Opinion of Judge McLean filed July 15, 1966	18
Answer	22
Excerpts from Testimony	25
Plaintiff's case:	
Walter Smith	
Direct	28
Cross	44

Page

Excerpts from Testimony—Continued

Plaintiff's case—Continued

James Marley

Direct 49

Cross 82

Lubos Pavlista

Direct 92

Cross 102

Patricia McGuire

Direct 103

Cross 112

Fred V. Heitmann

Direct 113

Cross 114

Gene Quara

Direct 121

Cross 128

Charles Salavarria

Direct 141

Cross 145

Charles Skopic

Direct 150

Cross 163

Defendant's case:

James Marley

Direct 166

Cross 190

Exhibits at Trial:

Exhibit 1—Excerpts from defendant's By-Laws (By-Laws revised October 15, 1963) 200

Exhibit 2—Excerpts from defendant's By-Laws (revised March 1959) 210

Exhibit 3—Excerpts from defendant's By-Laws (adopted September 26-27, 1951) 211

Exhibit 4—Excerpts from defendant's By-Laws (adopted December 9-11, 1947) 211

Page

Exhibits at Trial—Continued

Exhibit 27—Minutes of Meetings of defendant's Election and Objections Committee preceding May 19, 1965 election (Excerpts) 212

Exhibit 34—Report of defendant's Election and Objections Committee for the May 19, 1965 election 225

Exhibit 40—Record of initiations into defendant union—August 1963—July 1965 240

Exhibit 47B—Excerpts from defendant's By-Laws (adopted November 15-16, 1941) 241

Exhibit 57—Letter dated April 5, 1962 concerning administration caucus 242

Exhibit 58—Chart concerning attendance at meetings of defendant's Assembly 243

Exhibit 59—Chart concerning dates and duration of Assembly meetings of defendant 244

Exhibit 60—Chart entitled "Past service of administration candidates for Assembly in 1965" 245

Exhibit 61—Chart entitled "New Eligibles created each year in Assembly elections" 246

Exhibit 62—Chart entitled "New Eligibles created each year in Shop Delegates Council" 247

Exhibit 63—Chart entitled "Number of eligibles created by election to Executive Board" 248

Exhibit 69—Chart entitled "Prior Office-Holding As A Qualification For Local Union Office, As Provided In The By-Laws of Large Hotel and Restaurant Employees' Local Unions, May 1965" 249

Exhibit 70—Chart entitled "Prior Office-Holding as a Qualification for National Union Office, as Provided in the Constitutions of National Unions with 20,000 to 40,000 Members, May 1965" 258

Exhibit 71—Chart entitled "Prior Office-Holding as a Qualification for Local Union Office, as Provided in National Union Constitutions and Local Bylaws Governing Selected Large Local Unions, May 1965 260

Exhibit 72—Chart entitled "Prior Office-Holding as a Qualification for Local Union Office as Provided in National Union Constitutions, May 1965 266

Exhibit 73—Deposition of Hans Cohn (Excerpts) 270

Page

Exhibits at Trial—Continued

Exhibit B—Campaign sheet of Membership Party in 1965 election 277

Exhibit C—(Excerpts)—Campaign sheet of Membership Party in 1965 election 278

Exhibit D—1966 Amendment to defendant's By-Laws 281

Exhibit E—Defendant's chart of number of votes cast in prior elections 282

Exhibits for Identification:

Exhibit 55 Id. 283

Exhibit 56 Id. 285

Exhibit 64 Id. 287

Opinion of Judge Wyatt 288

Judgment and Permanent Injunction entered March 29, 1967 311

Notice of Appeal 313

Opinion of Court of Appeals 314

Judgment of Court of Appeals 327

Order of Court of Appeals denying Petition for Rehearing 329

Order of Court of Appeals denying Petition for Rehearing In Banc 330

Order Allowing Certiorari 331

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

66 Civ. 626

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor, PLAINTIFF

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION,
LOCAL 6, DEFENDANT

EXTRACTS FROM DOCKET ENTRIES

Date	Proceedings
Mar. 4-66	Filed complaint and issued summons.
Apr. 6-66	Filed stip. & order extending deft's time to answer to 4-13-66—Murphy, J.
Apr. 13-66	Filed summons & return, served deft.—3-10-66
Apr. 15-66	Filed deft's affdvt. & notice of motion to dismiss complaint—ret. 4-26-66
Apr. 15-66	Filed stip. & order extending deft's time to answer to 4-15-66—Murphy, J.
Apr. 26-66	Filed stip. adjourning defts' motion to 5-10-66
Jul. 15-66	Filed memorandum Opinion #32558—deft's motion to dismiss for failure to join indispensible parties is therefore denied—paragraphs 8c-8d & 9 have no proper place in this complaint—deft's motion to strike them is granted—/So Ordered—McLean, J M/N
Aug. 4-66	Filed deft's ANSWER C&G
Aug. 5-66	Filed stip. & order—extending time to deft. to answer to 8-4-66—Herlands, J.

Date	Proceedings
Sep. 26-66	Filed order referring action to Judge Wyatt for all purposes—Sugarman, J
Sep. 26-66	Filed pltff's affdvt & notice of application for judge for all purposes ret 9-21-66
Sep. 26-66	Filed memo endorsed—motion for judge for all purposes is granted—Sugarman, J.
Jan. 16-67	Before Wyatt, J. non-jury trial begun
Jan. 17-67	Trial continued
Jan. 18-67	" "
Jan. 19-67	" "
Jan. 19-67	" " and concluded—Decision Reserved
Mar. 20-67	Filed deft's brief
Mar. 20-67	Filed deft's post-trial brief
Mar. 20-67	Filed pltff's post-trial memorandum
Mar. 20-67	Filed pltff's trial memorandum
Mar. 20-67	Filed pltff's post-trial memorandum
Mar. 20-67	Filed deft's post-trial brief
Mar. 20-67	Filed deft's brief
Mar. 20-67	Filed pltff's trial memorandum
Mar. 20-67	Filed Opinion #33,334—the opinion contains the findings of fact and conclusions of law—A judgment in accordance with the opinion may be submitted on notice—Wyatt, J.
Mar. 29-67	Filed order enjoining defts. from enforcing in any further election of deft., any by-law requiring prior office holding as a qualification for office—jurisdiction of the court is retained for the purpose of enforcing or modifying this permanent injunction—Wyatt, J.—Judgment—Clerk mailed notice ent 3-30-67
Apr. 21-67	Filed pltff's notice of appeal—Mailed copy to Cohn & Glickstein
Apr. 21-67	Filed stenographer's minutes of proceedings of Jan. 16, 67

COMPLAINT

[fol. 603]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

66 Civ. 626

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor, PLAINTIFF

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION,
LOCAL 6, DEFENDANT

Plaintiff, W. Willard Wirtz, Secretary of Labor, United States Department of Labor, by his attorney, Robert M. Morgenthau, United States Attorney for the Southern District of New York, complaining of the defendant, alleges that:

1. This is an action brought pursuant to Title IV of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401 *et. seq.*, and jurisdiction is conferred on this Court pursuant to Section 402(b) of the said Act, 29 U.S.C. 482(b).

2. Defendant is now, and at all times hereinafter stated has been, an unincorporated association under the laws of the State of New York with its principal place of business in the County, City and State of New York.

3. Defendant now is, and at all times hereinafter stated, has been a local labor organization engaged in an industry affecting commerce, chartered by and subordi- [fol. 604] nate to its parent, the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, an international labor organization (hereinafter

called "The International"), all within the meaning of Sections 3(i), 3(j), and 401(b) of the said Act, 29 U.S.C. 402(i), 402(j), and 481(b).

4. On or about May 19, 1965 the defendant, purporting to act pursuant to its by-laws, held an election of officers, which election was subject to the provisions of Title IV of the said Act, 29 U.S.C. 481 *et seq.*

5. On or about June 7, 1965, members in good standing of the defendant, in accordance with the defendant's by-laws, protested the conduct of the said election of officers to the General President of the International. This protest was denied by the General President on or about June 11, 1965. Thereafter, on or about June 22, 1965, the said members appealed to the General Executive Board of the International, in accordance with the constitution and by-laws of the International. No action has been taken by the General Executive Board with respect to the said appeal.

6. Having invoked the remedies available under the defendant's by-laws and constitution and the by-laws of the International, and having failed to obtain a final decision within three calendar months thereafter, the said members on or about September 8, 1965, filed a complaint with the plaintiff in accordance with Section 402(a) of the said Act, 29 U.S.C. 482(a), alleging that the defend-
[fol. 605] ant violated Section 401 of the said Act, 29 U.S.C. 481, in the conduct of the said election of officers.

7. Pursuant to Section 402(b) of the said Act, 29 U.S.C. 482(b), the plaintiff investigated said complaint and found probable cause to believe that violations of Title IV of the Act had occurred in connection with the conduct of the said election and had not been remedied.

8. In the conduct of the said election, defendant violated Section 401(e) of the said Act, 29 U.S.C. 481(e), in that it:

(a) Imposed unreasonable qualifications upon its members' right to be candidates for and to hold union office, by limiting candidacy to persons having past or present membership in the Assembly, Executive Board, or the defunct Shop Delegates Council.

(b) Denied to its members in good standing the right to nominate, vote for or otherwise support the candidate or candidates of their choice by the imposition of the unreasonable qualification upon the members' right to be candidates for and to hold office as set forth in sub-paragraph (a) above.

(c) Denied to its members in good standing a reasonable opportunity to nominate candidates for union office by failure to give adequate and timely notice of the composition of its election districts.

(d) Denied to its members in good standing the right to vote for or otherwise support the candidate or candi- [fol. 606] dates of their choice without being subject to improper interference.

9. Defendant, in violation of Section 401(b) of the said Act, 29 U.S.C. 481(b), filled certain of its offices (to wit, certain seats on its Executive Board and one of its Vice-Presidencies) in a manner other than by election by secret ballot among its members in good standing.

10. The violations of Sections 401(e) and 401(b) of the said Act, 29 U.S.C. 481(e) and 481(b), found and alleged as aforesaid, may have affected the outcome of the election.

WHEREFORE, plaintiff prays for judgment:

(a) declaring the election held by the defendant Union on May 19, 1965, for officers to be null and void;

(b) directing the conduct of a new election under the supervision of the plaintiff;

(c) for the costs of this action; and

(d) for such other relief as may be appropriate.

Dated: New York, N. Y.
March 4, 1966.

ROBERT M. MORGENTHAU,
United States Attorney for the
Southern District of New York,
Attorney for Plaintiff,

By ARTHUR S. OLICK

ARTHUR S. OLICK,
Assistant United States Attorney.
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United States Court House
Foley Square, New York, N. Y.
10007.
Tel.: 264-6319

NOTICE OF MOTION

[fol. 610]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civil Action No.
66 Civ. 626

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor, PLAINTIFF

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION,
LOCAL 6, DEFENDANT

To: HONORABLE ROBERT M. MORGENTHAU
United States Attorney for the
Southern District of New York
Attorney for Plaintiff
U. S. Courthouse
Foley Square, New York

PLEASE TAKE NOTICE, that the undersigned will bring on the annexed motion for hearing before this Court at Room 506, United States Courthouse, Foley Square, Borough of Manhattan, City of New York, on the 26th day of April, 1966, at 10:00 A.M. in the forenoon of that day or as soon thereafter as counsel can be heard.

Dated: New York, New York,
April 13, 1966.

Yours, etc.

COHN AND GLICKSTEIN
Attorneys for Defendant
Office and P. O. Address
717 Fifth Avenue
New York, New York 10022

By JEROME B. LURIE
A Member of the Firm

DEFENDANT'S MOTION TO DISMISS

[fol. 611]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civil Action No.
66 Civ. 626.

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor, PLAINTIFF

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION,
LOCAL 6, DEFENDANT

Defendant moves this Court for an Order:

1. Dismissing the Complant herein for failure to join indispensable parties; or, in the alternative,

2. Striking paragraphs 8(c), 8(d), and 9 of the Complaint in that those portions of the Complaint allege violations of the Labor-Management Relations and Disclosure Act of 1959, 29 U.S.C. 401, et seq. in connection with which no Union member has exhausted the remedies available to him under the By-Laws of the defendant Union or the Constitution of the International Union as required by Section 402(a) of said Act (29 U.S.C. 482), as more particularly appears from the Affidavit of James Marley, sworn to the 13th day of April, 1966, and annexed hereto and made a part hereof.

COHN AND GLICKSTEIN
Attorneys for Defendant
Office and P. O. Address
717 Fifth Avenue
New York, New York 10022.

By JEROME B. LURIE
A Member of the Firm

AFFIDAVIT OF JAMES MARLEY

[fol. 612]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civil Action No.
66 Civ. 626

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor, PLAINTIFF

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION,
LOCAL 6, DEFENDANT

STATE OF NEW YORK
COUNTY OF NEW YORK ss.:

JAMES MARLEY, being duly sworn, deposes and says:

I am President of Hotel, Motel and Club Employees Union, Local 6, AFL-CIO, the defendant herein, and have personal knowledge of the matters hereinafter referred to. I make this affidavit in support of defendant's motion for an Order:

1. Dismissing the Complaint for failure to join indispensable parties; and

2. Striking those portions of the Complaint (paragraphs 8(c), 8(d) and 9) which allege violations of the Labor-Management Reporting and Disclosure Act of 1959 in connection with which no Union member has exhausted remedies available to him under the By-Laws of the defendant Union or the Constitution of the International Union.

Hotel, Motel and Club Employees Union, Local 6, AFL-CIO (hereinafter referred to as the "Union") is an un-
[fol. 613] incorporated association with a membership of approximately 27,000 hotel and club employees, employed in the City of New York. It is affiliated with Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO (hereinafter referred to as the "International Union").

On May 19, 1965, the Union, in accordance with its By-Laws and the Constitution of the International Union, conducted the election of officers which is the subject of this action and which plaintiff Secretary of Labor seeks to have set aside. (Copies of the By-Laws of the Union and the Constitution of the International Union are annexed hereto, made a part hereof, and marked Exhibits "A" and "B" respectively).

In the election in question, the undersigned and his fellow officers were elected as salaried officials of the Union for a three-year term, terminating May 1968.

Certain members of the Union who were denied the right to run for office because they did not meet the eligibility requirements set forth in the By-Laws of the Union, filed a complaint with the plaintiff Secretary. Based upon their complaint, the Secretary has instituted this action. It is clear, however, from an examination of the actions taken by said individuals prior to filing their complaint with plaintiff, that they did not exhaust the remedies available to them in the Union with regard to certain matters upon which plaintiff predicates his claim for relief herein. The following short history of the facts demonstrates this beyond any peradventure of a doubt.
[fol. 614]

Prior to the election, the Election and Objections Committee of the Union (duly designated pursuant to the By-Laws) ruled certain members of the Union ineligible to run for office because they did not have the qualifications required by Section 7a (2) of Article IV of the By-Laws. That Section, insofar as is pertinent, provides:

> "In order to be eligible for nomination as an officer, a candidate must possess the following qualifications:

(1) He must be a member of the Union in continuous good standing for a period of two years immediately preceding his nomination; (2) He must be a member of either the Assembly or the Executive Board, or else, at some time in the past, have served at least one year on either the Executive Board, the Assembly, or the old Shop Delegates Council."

On May 4, 1965, Joseph De Jesus, one of the members of the Union ruled not qualified to run for office because he did not meet the foregoing requirements, appealed the ruling of the Election and Objections Committee to the General President of the International Union. In his appeal to the General President (a copy of which is annexed hereto, made a part hereof, and marked Exhibit "C"), Mr. De Jesus stated his complaint in the following language:

"In accordance with the U.S. Department of Labor, Bureau of Labor-Management Reports, Technical Assistance Aid No. 5, Revised June 1961; Title; Electing Union Officers, under Contents 4 Nomination Procedures D. Who May Be Nominated; and being a member in good standing for over ten years, *I find Article IV, Section 7a(2) of the Local 6 By-Laws, unreasonable and unconstitutional*, deliberately tending to discriminate against all members, except actually providing purpose or power to a selected few who have remained in office with none or hardly any opposition for over fifteen years." (Emphasis supplied.)

[fol. 615]

It is apparent from the foregoing that the sole question raised by Mr. De Jesus in his appeal to the General President was whether the eligibility requirements contained in Section 7a(2) of Article IV were reasonable. He did not advert to any other aspect of the By-Laws of the Union nor did he complain of any other matter.

The General President sustained the ruling of the Election and Objections Committee by letter dated May 6, 1965 (a copy of which is annexed hereto, made a part

hereof, and marked Exhibit "D"). In his ruling the General President stated in part:

> "It is my opinion after a review of this section and of the applicable sections of the Landrum-Griffin Act that Section 7 of the By-Laws of Local 6 establishes reasonable qualifications for eligibility to be a candidate for and to hold office in Local 6. The purpose of that section is to ensure that a member who is nominated for office will have certain minimum qualifications and at least some working knowledge and experience in the administration and operation of the affairs of the local. In addition the qualifications set forth in Section 7 appear to be easily attainable by any member of Local 6, and I find nothing in this section which is in any way discriminatory."

It is thus clear that the General President ruled upon only one question, i.e. whether Section 7a (2) of Article IV was unreasonable or discriminatory.

Upon receipt of the decision of the General President, Mr. De Jesus appealed his ruling to the International Executive Board of the International Union by letter dated June 7, 1965, and the International Executive Board [fol. 616] affirmed the decision of the General President. (Copies of Mr. De Jesus' letter and the letter of the General Secretary-Treasurer of the International Union, informing him of the decision of the International Executive Board, are annexed hereto, made a part hereof, and marked Exhibits "E" and "F" respectively).

The foregoing correspondence represents the only invocation of the internal remedies available under the By-Laws and the International Constitution by any complaining member of the Union prior to the election.

Subsequent to the election, having lost by a nine-to-one majority, the Membership Party—to which Mr. De Jesus belonged—filed an appeal with the General President. That appeal (dated June 7, 1965, a copy of which is annexed hereto, made a part hereof, and marked Exhibit "G") is also an appeal from the rulings of the Election and Objections Committee of the Union and in pertinent part reads:

"In accordance with the U. S. Department of Labor, BLMR (Now LMMP) T.A. Aid # 5, revised June 1961, Title: Electing Union Officers under 4 (Nomination Procedures) D (Who May Be Nominated) we find the Article IV, Section 7a (2) of the Local 6 By-Laws is unreasonable and unconstitutional. These restrictive By-Laws tend to discriminate against all members, except for a selected few who have continuously remained in office through a series of elections without opposition for the past 15 years. We further base our appeal on the manner in which the members of the Local 6 Assembly are selected whereby it is impossible for members of an opposition party such as ours to ever be elected to a position on the Assembly."

[fol. 617]

The General President once again on June 11, 1965 sustained the decision of the Election and Objections Committee (a copy of which is annexed hereto, made a part hereof, and marked Exhibit "H"), and the appeal from that ruling to the General Executive Board (a copy of which is annexed hereto, made a part hereof, and marked Exhibit "I") couched in language identical to that contained in the appeal to the General President hereinabove set forth, was denied by the General Executive Board (Letters of the General Secretary-Treasurer of the International Union, dated October 6, 1965, is annexed hereto, made a part hereof, and marked Exhibit "J").

The two appeals referred to constitute the only attempt on the part of the complaining members of the Union (upon whose complaint the Secretary predicates his right to bring this action) to exhaust the internal remedies available under the By-Laws of the Union and the International Constitution.

The only question raised on these appeals was the question of whether or not the qualifications to run for office, contained in Section 7a (2) of Article IV of the By-Laws were reasonable.

In the Complaint in this action, as required by statute (29 U.S.C. 482), plaintiff alleges the exhaustion of reme-

dies in accordance with the Union's By-Laws and refers to the letter of June 7, 1965 (Exhibit "G") of the membership party to the General President of the International in support of this allegation (paragraph 5 of the Complaint). Defendant Union does not deny that the allegations contained in paragraphs 8(a) and 8(b) of [fol. 618] the Complaint are based upon matters with regard to which members of the Union exhausted their internal remedies by appealing to the General President and the International Executive Board as hereinabove set forth. These appeals were taken pursuant to Section 6 of Article IV of the Union's By-Laws which provides in part:

> "The Election and Objections Committee shall also have the power to rule on any objections as to eligibility of any candidate to run for office, subject only to appeal to the General President of the International Union."

As has been demonstrated, only the question of eligibility to run for office was raised by the complaining Union members in their appeal to the General President of the International Union. No other matter was before him. Indeed, under this particular provision of the By-Laws, this was the only question which could be raised. Any other matter would have to be presented under the appropriate provisions of the International Constitution. Despite this fact, there is contained in the Complaint in this action in paragraphs 8(c), 8(d) and 9, allegations of violations of the law which were never raised by the complaining Union members prior to their filing their complaint with plaintiff. No attempt has ever been made by them to exhaust the remedies available under the Constitution of the parent body, the International Union, with regard to these matters.

The paragraphs in question read as follows:

[fol. 619]

> "8. (c) Denied to its members in good standing a reasonable opportunity to nominate candidates for

union office by failure to give adequate and timely notice of the composition of its election districts.

"8. (d) Denied to its members in good standing the right to vote for or otherwise support the candidate or candidates of their choice without being subject to improper interference.

"9. Defendant, in violation of Section 401(b) of the said Act, 29 U.S.C. 481(b), filled certain of its offices (to wit, certain seats on its Executive Board and one of its Vice-Presidencies) in a manner other than by election by secret ballot among its members in good standing."

None of the issues raised by said allegations was even adverted to in the appeals taken by the complaining Union members, and, that being the case, it is quite clear that no member of the Union sought to exhaust the remedies available to him under the Constitution of the International Union before complaining about these matters to plaintiff, if indeed they did so complain.

The Constitution of the International Union provides a ready means for aggrieved members who feel deprived of a fair election to file charges with the International Union and have their complaint adjudicated. In this case, however, as has been demonstrated, no attempt was made by the individuals upon whose complaint the Secretary's right to bring this action must be predicated, to bring such matters before either the local or International Union for remedy. Consequently, neither the Union nor the International Union was afforded an opportunity to remedy the alleged violations. That such remedies were available to complainants can not be doubted.

[fol. 620]

Section 11(b) of Article X of the International Constitution provides in part:

"The Local Unions shall provide safeguards to insure a fair election. . . ."

In addition, Section 2(a) of Article X of the International Constitution provides:

> "Local Unions shall be required to enact their own by-laws; provided, however, that such by-laws may not conflict with the International Constitution, federal, state or provincial laws, . . ."

Section 1 of Article XX of the International Constitution "Grounds for Charges", reads in part as follows:

> "A member, Local Union, or other subordinate body and the officers thereof, . . . may be required to stand trial and charged with any of the following offenses:
>
> (a) Violation of any specific provision of this Constitution."

Any member of the Union who wished to charge it with the alleged violations referred to in paragraphs 8(c), 8(d) and 9 of the Complaint, could have and indeed should have brought charges against the Union and its officials for violation of those provisions of the International Constitution above set forth which require that Local Unions provide safeguards for a fair election and that the By-Laws of any Local Union comply with the federal law. Section 3 of Article XX of the International Constitution permits any member to bring charges:

> "Who May File Charges. A charge against a member, subordinate body or officer thereof may be filed by any member of the International Union having knowledge of the facts alleged to constitute a violation of this Constitution; any officer of a Local or [fol. 621] the International may file such charge upon information furnished him by a member. A charge involving breach of a subordinate body's by-laws may only be filed by a member of such subordinate body or a General Officer of the International Union."

Sections 4 through 18 set forth, in graphic detail, the entire process by which the aggrieved member may make his protest heard. These sections contain the step-by-step grievance procedure from inception through trial, evidence and appeals.

No member of the Union availed himself of this right. No member of the Union exhausted his internal remedies

with regard to the matters alleged in paragraphs 8(c), 8(d) and 9 of the Complaint, and, as a consequence, it is respectfully submitted that plaintiff Secretary is without authority to bring an action seeking relief predicated upon these matters.

JAMES MARLEY

Sworn to before me,
this 13th day of April, 1966.

GERTRUDE F. LEVINE
Notary Public, State of New York
No. 31-2328700
Qualified in New York County
Commission Expires March 30, 1967

OPINION BY JUDGE MCLEAN

[fol. 702]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

66 Civ. 626

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor, PLAINTIFF

-against-

HOTEL, MOTEL AND CLUB EMPLOYEES UNION,
LOCAL 6, DEFENDANT

APPEARANCES:

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Of Counsel

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JEROME B. LURIE
LEONARD LEIBOWITZ
Of Counsel

[fol. 703]

McLEAN, D. J.

This is an action by the Secretary of Labor, pursuant to 29 U.S.C. § 482(b) for a judgment declaring an election of officers of defendant union held on May 19, 1965 to be null and void. Defendant moves (1) to dismiss the action for failure to join the union officers as defendants, and (2) in the alternative, to strike paragraphs 8(c), 8(d) and 9 of the complaint.

The ground of the first motion is that the officers elected at the election in question are indispensable parties, because their rights will be affected by the determination made in this action. It seems clear that the statute does not contemplate their joinder, for its provides that the action shall be brought "against the labor organization as an entity." 29 U.S.C. § 482(b). But defendant says that the statute deprives the union officers of due process of law and is therefore unconstitutional.

This same contention, phrased in very much the same way, has recently been rejected in *Wirtz* v. *Teamsters Union Local No. 73*, 53 L.C. ¶ 11,288 (N.D. Ohio, E.D., [fol. 704] May 11, 1966). The court's opinion refers to two unreported decisions to the same effect, one of which is a decision by Judge Anderson in the District Court in *Wirtz* v. *Local 191, International Brotherhood of Teamsters*, Civ. No. 9776 (D. Conn. 1964), denying a motion by union officers for leave to intervene, in an action brought by the Secretary under this statute.

The subject is thoroughly treated in *Wirtz* v. *Teamsters Union Local No. 73, supra*, and I see no need to repeat here what was said there. The court's conclusion seems to me to be correct. No case to the contrary has been found. I will follow the *Local No. 73* decision. Defendant's motion to dismiss for failure to join indispensable parties is therefore denied.

Defendant's alternative motion raises a different question. The paragraphs of the complaint which defendant seeks to strike relate to alleged violations of law about which apparently no union member complained, either to the union or to the Secretary. The moving affidavit es-

tablishes, without contradiction from plaintiff, that the sole ground upon which any union member protested to the union about the election related to Article IV, Section [fol. 705] 7A(2) of the union's by-laws, which provides that to be eligible for nomination as an officer, a candidate must be either a present or former member of the Executive Board or the Assembly, or a former member of the Shop Delegates' Council, now defunct. The protesting members considered this by-law too restrictive. Concededly they exhausted their remedies within the union, without success, as far as this objection was concerned. Although the complaint in the present action does not specify the objection contained in the complaint of the union members to the Secretary, plaintiff does not contend that it was anything other than this same objection to the by-law provision. In his complaint in this action, however, the Secretary attacks the election, not only upon this ground, but also upon additional grounds which apparently occurred to him in the course of his investigation of the union members' complaint, i.e., that the union failed to give adequate and timely notice of the composition of its election districts, that the members' right to support and vote for the candidate of their choice was "subject to improper interference" and that certain [fol. 706] offices of the union have been filled "in a manner other than by election." This last allegation, it would seem, does not even relate to the election of May 19, 1965 which the Secretary seeks to overturn. Rather, it appears to be a complaint that there was no election at all, as far as certain officers are concerned.

29 U.S.C. § 482(a) provides that:

> "(a) A member of a labor organization—
>
> (1) who has exhausted the remedies available under the constitution and by-laws of such organization and of any parent body . . .
>
> may file a complaint with the Secretary . . . alleging the violation of any provision of section 481 of this title. . . ."

Subsection (b) provides:

> "The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall . . . bring a civil action . . . to set aside the invalid election. . . ."

Pertinent legislative history of this statute is reviewed in *Wirtz* v. *Local Union No. 125, International Hod Carriers', Etc.*, 231 F. Supp. 590 (N.D. Ohio, E.D. 1964). It indicates that in enacting this section, Congress had in [fol. 707] mind the desirability of preserving independent self-government of the union as far as was compatible with the public interest in free and democratic union elections. It intended that the union should have an opportunity to regulate its own affairs before the Secretary could ask a court to regulate its affairs for it. As the court said in *Wirtz* v. *Local Union 169, International Hod Carriers', Etc.*, 246 F. Supp. 741, 752 (D. Nev. 1965):

> "The act should be construed to mean that the Secretary has, on complaint of a union member, the right to investigate all aspects of the contested election and to base a complaint to the Court on every issue which the defendant union had a fair opportunity to consider and resolve in connection with any member's appeal to the General Executive Board of the union."

No doubt it would be unreasonable, as the court in *Wirtz* v. *Local 169, supra*, also recognized, to insist that the Secretary's action should be limited to the particular ground asserted by the particular union member who complained to him. That member might be too inarticulate to express the complaints of his fellows. He might not even know of all of them. But it is not too strict to limit the Secretary's attack upon an election to those grounds [fol. 708] about which some member, not necessarily the one who eventually complained to the Secretary, has previously complained to the union. If the Secretary is free to attack an election because of matters never brought to the attention of the union, and which the union never had an opportunity to correct, as the Secretary seeks to do here, the congressional intent clearly manifest in this statute is frustrated.

The cases so hold.

Wirtz v. *Local Union 125, supra;*
Wirtz v. *Local Union 169, supra;*
Wirtz v. *Local Unions No. 406, 406-A, 406-B, I.U.O.E.*, 53 L.C. ¶ 11,297 (E.D. La. May 19, 1966);
Wirtz v. *Local Unions No. 9, 9-A and 9-B, I.U.O.E.*, 51 L.C. ¶ 19,579 (D. Colo. 1965).
See *Wirtz* v. *Local 191, International Brotherhood of Teamsters, etc.*, 321 F.2d 445, 448 (2d Cir. 1963).

It follows that paragraphs 8(c), 8(d) and 9 have no proper place in this complaint. Defendant's motion to strike them is granted.

So ordered.

Dated: July 15, 1966

EDWARD C. MCLEAN
U. S. D. J.

ANSWER

[fol. 709]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

66 Civ. 626

W. WILLARD WIRTZ, Secretary of Labor, United States Department of Labor, PLAINTIFF

-against-

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6, DEFENDANT

Defendant, by its attorneys, Cohn and Glickstein, for its Answer to the Complaint herein:

1. Admits the allegations contained in paragraph "5", except that it denies that no action has been taken by the General Executive Board with respect to the appeal lodged by the complaining union members.

2. Admits the allegations contained in paragraph "6", except that it denies knowledge or information sufficient to form a belief as to the truth of the allegations that said members on or about September 8, 1965, filed a complaint with the plaintiff in accordance with Section 402 (a) of the said Act, 29 U.S.C. 482(a), alleging that the defendant violated Section 401 of the said Act, 29 U.S.C. 481 in the conduct of the said election of officers.
[fol. 710]

3. Denies each and every allegation contained in paragraph "7", except that it denies knowledge or information sufficient to form a belief as to the truth of the allegation that the plaintiff investigated said complaint.

4. Denies each and every allegation contained in paragraphs "8" and "10".

AS AND FOR A FIRST COMPLETE AND AFFIRMATIVE DEFENSE

5. The relevant eligibility requirements for nomination to candidacy for office in defendant-union are reasonable in that their purpose is to assure that a candidate for general office in the defendant-union, with a membership in excess of 27,000, has certain minimum leadership experience, and that he has shown an interest in, and is familiar with, the Union, its affairs, policies, and at least a portion of the membership.

AS AND FOR A SECOND COMPLETE AND AFFIRMATIVE DEFENSE

6. Most of the Union members who were declared ineligible to run for office pursuant to the eligibility requirements in question were members of a group known as the Membership Party.
[fol. 711]

7. Some of the members met said requirements and were declared eligible to run for office. Others were declared ineligible to run for general office but were eligible to run for International Convention Delegate or Assembly Delegate. And, of course, some were declared eligible to run for either or both General Office and Delegate.

8. Those who were declared eligible chose to run as part of the Membership Party ticket, i.e., Row B, as opposed to the Administration Slate, i.e., Row A.

The voting membership of the Union was fully aware of the existence of the Membership Party, its policies and proposals and the fact that said party was represented on Row B of the voting machines.

The results of the election were clear. The Membership Party and its candidates were overwhelmingly defeated.

Thus, had those members who were declared ineligible for General Office been permitted to run, or had those members who were declared ineligible to run at all been permitted to do so, the outcome of the election would have been unaffected by their presence on the ballot.

COHN AND GLICKSTEIN
Attorneys for Defendant
Office & P. O. Address
717 Fifth Avenue
New York, N. Y. 10022.

* * * *

[fol. 9] * * *

Mr. Kushner: Your Honor, may I inquire of Mr. Lurie whether he will stipulate that Exhibits 1, 2, 3 and 4 comprise all the bylaws of Local 6 which governed the local during the period December 1947 through May 1965?

Mr. Lurie: So stipulated.

* * * *

[fol. 36] * * *

Mr. Kushner: Your Honor, may I inquire of Mr. Lurie whether he will agree that the sample ballots [Exhibits 31 through 31G] just introduced in evidence accurately represent the ballots as they appeared on the voting machines in the 1965 election?

Mr. Lurie: Yes.

* * * *

[fol. 39] * * *

Mr. Kushner: I offer as Exhibit 35 a copy of the membership roster of Local 6 as of September 30, 1964.

Mr. Lurie: No objection.

Mr. Kushner: Your Honor, will Mr. Lurie stipulate with me that this is the last official membership roster that Local 6 submitted to its international union prior to the election of May 19, 1965?

Mr. Lurie: So stipulated.

(Plaintiff's Exhibit 35 received in evidence.)

Mr. Kushner: Your Honor, will Mr. Lurie also stipulate that the total number of members listed in Exhibit 35—

Mr. Lurie: I believe it is 27,354.

Mr. Kushner: Well, I refer you to the insertion you [fol. 40] made in page 56 of Mr. Smith's deposition, which listed the number as 27,208.

Mr. Lurie: I beg your pardon.

The Court: What is the figure, 27,208?

Mr. Lurie: So stipulated.

* * * *

[fol. 41] * * *

Mr. Kushner: Your Honor, I assume from what Mr. Lurie has just said that he agrees that Local 6 has no constitution of its own except in so far as it is governed by the international's constitution?

The Court: It is bound by the constitution of the international.

Mr. Lurie: That is correct.

The Court: Which may or may not be considered [fol. 42] its own constitution, but it doesn't have any other one—I take it that is agreed?

Mr. Lurie: Yes, sir.

Mr. Kushner: Will Mr. Lurie also agree that the international's constitution just offered as Exhibit 36 was the constitution effective as of the date of the Local 6 election of May 19, 1965?

Mr. Lurie: So stipulated.

* * * *

[fol. 48] * * *

Mr. Kushner: Your Honor, as the last matter preliminary to calling the plaintiff's first witness, I would like to read in evidence a few of the answers to interrogatories given by the defendant to interrogatories propounded by plaintiff.

* * * *

Mr. Kushner: The answers to these interrogatories were verified on January 13, 1967 by Miss Betty Bentz.

Interrogatory 4-A:

"State the number of members of defendant who were eligible to vote in the general election held by defendant on May 19, 1965."

The answer to Interrogatory 4-A is:

"27,354."

* * * *

[fol. 49]

Interrogatory 4-B:

"Identify precisely all sources and records used in preparing the answer to Interrogatory 4-A."

The answer:

"The membership figure reported to the Hotel and Restaurant Employees and Bartenders International Union as of April 30, 1965."

Interrogatory 3-A:

"Is the list appended hereto as Exhibit 1 a complete and accurate list of numbers of new members initiated into defendant during period August, 1963 through July, 1965?"

The answer to 3-A:

"Yes."

I now offer in evidence that list of new members initiated referred to in Interrogatory 3-A.

Mr. Lurie: If your Honor please, I don't see the relevance of this document and I make an objection on that ground.

The Court: Well, tell me about it. These are new members initiated when?

Mr. Kushner: From August, 1963 to July, 1965, your Honor. One of our basic arguments is that this prior [fol. 50] office holding requirement of defendant discriminates against younger members.

The Court: These particular people had a longer waiting time, or something of that sort?

Mr. Kushner: Yes.

The Court: I will permit it and take Mr. Lurie's objection as going to its weight.

(Plaintiff's Exhibit 40 received in evidence.)

Mr. Kushner: Interrogatory 5-B:

"State the number of members of defendant as of April 13, 1965 who were members of the assembly of defendant or at some time in the past served at least one year in the assembly."

Answer to Interrogatory 5-B:

"534."

The Court: But in addition to that figure, anybody [fol. 51] who had been a member of the shop delegate's council would be eligible. How do we get the figure for that group?

Mr. Kushner: Your Honor, I think that defendant might be more qualified than I to answer it. I think—

The Court: You are not giving me the figure now?

Mr. Kushner: Not at the present time, no.

Mr. Lurie: If your Honor wants to know something about that, I can tell you, just for the record at this point.

Not only would the prior members of the shop delegate's council be eligible but so also would former members of the executive board be eligible to run for office.

As is happens, the shop delegate's council went out of existence in 1951 and the union didn't have an IBM setup at that time and the records are some sparse records. We have been able to cull, and you will get that from the witnesses, at this point approximately 1300 people who are still in the union who were at one time or another a member of the shop delegate's council and the executive [fol. 52] board in addition to the 534, so that you do have approximately 1800.

The Court: We will come to that in due course. I want to be sure that the 534—I have to assume for the present, at least, that that is not the sum total of everybody who might be eligible under the union bylaws?

Mr. Lurie: That is correct.

* * * *

[fol. 53] * * *

WALTER SMITH.

Direct Examination:

Q Mr. Smith, by whom are you employed? A By [fol. 54] Hotel, Motel and Club Employees Union, Local 6.

Q How long have you been employed by Local 6? A About 15 years.

Q What position do you hold now? A I am the office manager.

Q How long have you been office manager? A About 15 years.

Q Can you describe your duties? A I supervise the clerical functions of the clerical staff in Local 6. I supervise the IBM installation that we have and generally supervise all the clerical help in the office.

Q Do you know the number of the clerical employees you have under your supervision? A Approximately 24.

Q You mentioned an IBM installation a moment ago. Can you describe that briefly? A Yes. We use International Business Machines to post mainly the records, the dues payments, of the members of the union. We use it to prepare mailing lists in the cases where we need them and we run various reports using machines to do it because they are faster.

[fol. 55]

Q How long have you had this IBM installation? A Since 1952.

Q Do your IBM cards indicate those Local 6 members who have held membership in the assembly. A We have a set of cards that are established each time there is an election for mailing purposes solely, so that when members are required to attend meetings we send them mailings, but there is no special record card as such for delegates or, you know, members.

Q After the assembly term is over, what becomes of the cards of the members that have been set aside for mailing purposes? A They are discarded. They are not used.

Q Do your IBM cards show those members of Local 6 who have held membership on the executive board? A There, too, we have a set of cards separate and apart from our regular membership records for easy obtainability in order to run, usually, mailing listings.

Q These cards similarly would be discarded after the term of the executive board was over? A That's correct.

[fol. 56]

Q Do your IBM cards show those members of Local 6 who were members of the shop delegate's counsel? A No, sir, they do not.

Mr. Kushner: May I have these three exhibits marked for identification, please.

(Plaintiff's Exhibit 41, 42 and 43 marked for identication.)

Q Mr. Smith, did you prepare Exhibit 41 for identification (handing)? A Yes, I did.

Q When did you prepare it? A Approximately a month ago, few weeks ago.

Q What does it show? A This looks to me like the listing of those union members that served in the assembly from 1951 through 1964 elections. It shows their name and union book number.

Q Let's go over that a moment. Do you mean the 1962 election? A Those that were elected.

Q You referred to the 1964 election. There was no election in 1964, was there? A 1962, that's correct.

[fol. 57]

Q So it shows the members of Local 6 who were still members of Local 6 as of what date, who were members of the assembly? A That's correct, and the date—

Q As of what date? A Well, as of about a month ago, when it was prepared.

Q What sources did you use in preparing—

The Court: Well, wait. Does that mean that the list in your hand includes those who were elected in 1965?

The Witness: No, it doesn't.

Q Let's clarify that a moment. This list shows Local 6 members elected to the assembly of 1951; is that true? A Yes.

Q Provided that those members were still members of Local 6 as of about a month ago, is that correct? A That's correct.

Q Does this list also show Local 6 members who were members of the 1954 assembly? A That's correct.

Q Again with the same proviso, that they continued as members of the union as of about a month ago? A [fol. 58] That's correct.

Q Does this list also show Local 6 members who were members of the 1956 assembly? A That's correct.

Q And of the 1959 assembly? A That's correct.
Q And of the 1962 assembly? A That's correct.
Q And again with the same proviso, that these persons still had to be members of Local 6 as of about a month ago? A That's correct.

The Court: Well, if they had died or resigned or given up their membership in the union and gone into some other work, the list wouldn't show it?

The Witness: That's correct.

The Court: And does that total 534?

The Witness: That's correct.

Q Wait a moment before you answer. Does the total appear at the end? A Yes. It is 534.

Mr. Kushner: I offer Exhibit 41 for identification in evidence.

[fol. 59]

Mr. Lurie: No objection, your Honor.

The Court: Without objection, it will be received.

(Plaintiff's Exhibit 41 for identification received in evidence.)

Q Mr. Smith, what sources did you use in preparing Exhibit 41? A The results of the elections held—the reports of the Election and Objections Committee. We checked their names against a master group of cards of those people currently in the union and wherever we found the name, we pulled the card.

Q What reports of the Election and Objections Committee did you use as sources? A The report of the 1954 election, report of the 1956 election, 1959, 1962 elections, and then the magazine or the newspaper edition of the 1951 election.

Q I show you Exhibit 20 and ask you if that is a copy of the report of the Election and Objections Committee that you used for 1954? A That's correct, yes.

Q Where do you find in that Exhibit 20 names of [fol. 60] persons who were elected to the assembly? A I don't find assembly as such, but executive board and department committee members was a general term that we

used, that they were members of the assembly, but evidently it was not called the assembly at that time.

Q Is it correct that you used persons listed as executive board and department committee in the 1954 Election and Objections report, which is Exhibit 20, in preparing your Exhibit 41? A That's correct, yes.

Q I show you Exhibit 21, and ask you if that is the report of the Election and Objections Committee for 1956 which you used in preparing your list, which is Exhibit 41? A That's correct, and the same error that I made before, calling them assembly, shows that they are executive board and department committee.

Q So that you used those listed as department committee and executive board in 1956 in preparing Exhibit 41? A That's correct.

Q Did anyone tell you to use those lists? A [fol. 61] Specifically, I don't recall if anyone told me to, but I knew that that was a source of information that could be used to determine this list.

Q Did you check to see whether there might be other sources for the members of the assembly in 1954 and 1956? A Yes.

Q How did you check? A When the issue came up, I consulted with the president of the union, with the secretary-treasurer of the union and asked for whatever sources might be available in order to get the information that was required.

Q What did they tell you? A To utilize the reports, to look in the newspaper, the publications, to see if we could find any minutes that might report certain things—almost all sources that might be available.

Q Did you also use Exhibits 22 and 23 in preparing the list which is in evidence as Exhibit 41? A Yes, sir.

Q And those are the Election and Objections Com- [fol. 62] mittee reports for 1959 and 1962? A That's correct.

Q Did you also use the issue of the Hotel and Club Voice of Local 6 for May 5, 1951 (handing)? A Yes, I believe—yes.

Q Did you use any issues of the Hotel and Club Voice for 1956 in preparing Exhibit 41? A No, sir.

Q Did you use any issues of the Hotel and Club Voice for 1954 in preparing Exhibit 41? A No, sir.

Q Before preparing Exhibit 41, did you check with anyone to see if the department committees and the executive boards in 1954, 1956 were the same as the assemblies in those years? A I don't recall doing such a thing. It was an assumption on my part that they were, based upon the knowledge that I have.

Q Has your knowledge changed since you prepared the list, which is Exhibit 41? A No.

Mr. Lurie: If your Honor please, I call your attention to the fact that in evidence is the 1951 by-laws of the union, which provides, in the first place, that the mem-
[fol. 63] bers of the various department boards shall be members of the assembly. That is on page 7, Section 13. Under any circumstances, members of the executive board would be eligible under 7(a)(2). This list can only contain eligibles and indeed if Mr. Smith didn't include the convention delegates who were elected in 1954 and 1956, the list is not accurate in that it is not complete and is smaller than it should be and not larger than it should be.

The Court: Go ahead, Mr. Kushner.

By Mr. Kushner:

Q Do you find the name Lubos Pavlista listed on Exhibit 41? A No, I do not.

Q Should Mr. Pavlista's name be listed thereon? A Yes, it should have.

Q What is the reason for that?

Mr. Lurie: Which is 41?

The Court: 41 is the list which Mr. Smith prepared about a month ago, totaling 534 names.

A It should have been on, yes.

Q What is the reason for that? A The clerk that was assigned evidently missed the card or couldn't find
[fol. 64] the card in the file at the particular time they worked on it.

Q I didn't mean that. I meant for what reason should Mr. Pavlista be listed on that list? A He was an officer in the period; that would show his name should be on it. He was an officer of the union.

Q What office? A That of a business agent.

Q Do you know during what period he held that office? A I believe it was since—no, maybe not—I don't recall. He may not have to be on this list. If this list is as of the '62 group, I don't know if he became an officer prior to '62 or immediately thereafter. I'm not sure. If he was an officer prior to 1962, he should have been on the list; if he was not, then he shouldn't have been.

Q Is it accurate to state that you took the names of persons who were listed as officers from the various Election and Objections Committee reports and you placed them on this list, which is Exhibit 41? A That is correct.

Q And they compose part of the list? A That's correct.

[fol. 65]

The Court: Well, wait. Exhibit 41 purports to be a list of what?

The Witness: Of the assembly members—of those eligible to run for paid office from 1951 through the 1962 election—that had served on a body which would have made them eligible under the rules and the bylaws.

The Court: So that would be either the assembly or the executive board or the old shop delegate's council?

The Witness: No, I don't believe it includes the shop delegate's council.

The Court: But it includes—

The Witness: The assemblies.

The Court: Or the executive boards?

The Witness: Yes.

The Court: But, Mr. Smith, a business agent isn't a member of the assembly, is he?

The Witness: Yes, he is, by virtue of his office.

The Court: Yes, you are right, I see it here.

The members of the administrative board and the business agents of the union shall automatically be members [fol. 66] of the assembly.

The Witness: That's right.

The Court: Go ahead.

By Mr. Kushner:

Q This Exhibit 41 also lists members of the department committees for 1954 and 1956? A Yes, it does.

Q Does it list members of the department committees for 1951? A If I might look at the '51 exhibit and see how it was run.

Q Please do. What exhibit number are you referring to? A This is Exhibit 24, which shows the results of the convention delegates, and my determination is that the department committees as such are not listed as such as —the delegates by department but not the department committee as we know it today.

Q That is for the year 1951? A Yes, sir.

Q Are department committees listed for 1959 or 1962 in Exhibit 41? A In 1959 they are not listed individually. However, department committees come out of the [fol. 67] assembly, which I know—what was the other year?

Q 1962. A 1962, it is the same type of answer, that they are not listed as department committee but the department committee is elected from the assembly.

Q Did you prepare Exhibit 42 for identification (handing)? A Yes, sir.

Q When? A I believe this was done in the summer at the initial request of the government, a year or so ago.

Q Summer of 1965? A I believe that's correct.

Q Did anyone help you in preparing it? A Yes, there was a staff of clerks.

Q How did they go about and how did you go about preparing Exhibit 42 for identification? A We took the back issues of the publication Voice and wherever mention was made in any of the articles stating that someone was a shop chairman or an executive board member or a shop delegate, we picked up their name and prepared this listing from it.

Q What period does Exhibit 42 for identification [fol. 68] cover? A This looks like that it represents from December of 1940 through October of 1947. You have also given me Exhibit 43, which includes part of the period that I just named.

Q Was Exhibit 43 for identification prepared in the same way as Exhibit 42 for identification? A Yes, it was.

Q The two exhibits together show what period of time? A December of 1940 through October of 1947.

Q Did you read the Hotel and Club Voices yourself in preparing these lists? A I may have done an issue or two, yes, sir.

Q Who did the others? A We had a couple of clerks from the office. We hired someone for a period of time. The educational director helped.

Q Anyone else? A Some officers may have helped.

Q Anyone besides the ones you just mentioned? A To the best of my knowledge, that's it.

Q Were any newspaper employees enlisted— A [fol. 69] That is the one I said we hired. This was during the newspaper strike and we needed additional help in order to do this large job and we hired a girl, a reporter or a newspaper worker, to work a short period of time in doing this job, yes, sir.

Q Do you know how long it took to prepare these two lists? A It took quite some time. Specifically how long, I don't know.

* * * *

Q Did you give instructions to the persons who were culling the names from the newspapers which appear on these lists as to what they were to do? A In some cases, yes.

Q What were your instructions? A They were to [fol. 70] read the articles in the newspapers, in the union newspapers, and wherever mention was made that someone was elected a delegate or a story might have concerned a shop chairman or someone made a trip—no matter what the story was, if it made reference to the fact that they were a delegate in the shop or held a delegated position in the shop, they were to write the name down.

Q Did you tell them that if somebody was listed as delegate Mary Doe, went to the hospital yesterday, then Mary Doe's name would be listed? A That's correct, yes. That is an example.

Q Prior to the time that these two lists, Exhibits 42 and 43 for identification were prepared, did you have any lists showing shop delegates of Local 6? A No.

Mr. Kushner: I offer Exhibits 42 and 43 for identification in evidence.

Mr. Lurie: No objection, with the understanding, your Honor, that we will introduce evidence which will indicate that these lists are incomplete.

The Court: Without objection, it will be received.

[fol. 71]

(Plaintiff's Exhibits 42 and 43 for identification received in evidence.)

Mr. Kushner: May I have these marked for identification. Your Honor, they are all nomination acceptance certificates and it might be best to mark the folder, if that is agreeable to Mr. Lurie.

The Court: If you are going to offer them and Mr. Lurie is not going to object, maybe he could take a look at them now and we could just mark them.

Mr. Kushner: Yes, sir.

(Documents handed to Mr. Lurie.)
(Pause.)

Mr. Lurie: I have no objection, your Honor.

The Court: All right, then dictate into the record what these are and we will ask the clerk to mark them.

Mr. Kushner: These are the nomination acceptance certificates of those persons in Local 6 who ran or sought to run for the offices of vice president, business agent or those of general officer in the May 19, 1965 election. There is only one missing person here and I could not locate that [fol. 72] certificate. I assume Mr. Lurie also could not.

The Court: And these several certificates are included in one folder?

Mr. Kushner: Yes, your Honor.

The Court: We will mark the folder containing those certificates as Exhibit 44.

(Plaintiff's Exhibit 44 received in evidence.)

By Mr. Kushner:

Q Mr. Smith, have you seen the certificates in Exhibit 44 before? A Yes, I have.

Q You will note that there is a blank in each certificate for dues standing. A Yes.

Q Did you check dues standing? A Yes, I did.

Q When did you receive these certificates to check dues standing? A Either the night of the nominations meeting or the very next day, or possibly a day after that.

Q Who gave the certificates to you? A I either got if from the secretary-treasurer's office or from the Elec-
[fol. 73] tion & Objections Committee, I don't recall which.

Q Can you place a date when you say the night of the nomination or the very next day? A Nominations are usually held about two weeks prior to the election, so it may have been in the early part of May, 1965.

[fol. 74]

Q How did you check dues standing? A Well, after receiving the nomination certificates, we checked them against their dues record cards in the union. And we checked them, depending upon the office determining how far we should check.

In the case of an officer nominee, we checked two years prior to the nomination. In the case of an assembly delegate, we checked one year prior.

Q Did you also check eligibility by reason of present or prior service in the assembly, executive board or shop delegate's council? A If the position was that which required that requirment, in most cases, we did, yes.

Q What position required that requirement? A That of paid office: vice president, president, business agent, recording secretary.

Q The four general offices, the vice presidents, the business agents, is that correct? A That's correct.

Q How did you go about checking this prior service requirement? A Usually checking it against the prior
[fol. 75] assembly election results. If one served on the assembly in the prior election, that made them eligible; or based upon my own personal knowledge of some people who I know. That would be the most common way that I have done it, yes.

Q When you referred to the prior election, did you refer to the 1962 one? A That is correct, yes.

Q If someone was not listed in the 1962 assembly, did you check further? A I don't recall if I did or if I didn't, but I may have.

Q Is it correct to state that you considered that all incumbent officers were automatically eligible as far as the prior office holding requirement went? A That's correct, yes, sir.

Q So that there was no need to check the incumbents in this respect? A That's correct.

Q All right. Did you check whether any of the persons running in opposition to the incumbents had served in the shop delegate's council? A No, I did not.

[fol. 76]

Q Did you check whether any of those persons running in opposition had served in the 1959 assembly? A I don't believe I did. I may have. I'm not sure. I may have to verify if I thought someone did.

* * * *

[fol. 77] * * *

The Court: Let's go on with the questioning.

But tell me, before we do that, somebody: I know what general officers are. But is there anything in the bylaws that defines what an officer is?

Mr. Lurie: No, your Honor. There is not.

The Court: I take it that the practical interpretation [fol. 78] is that business agents are officers?

Mr. Lurie: That is correct.

The Court: Of course, a vice president, the word itself would suggest that a vice president is an officer, and by custom, at least, business agent has been interpreted to be an officer?

Mr. Lurie: Yes, I would say that is so.

The Court: Mr. Smith, as I understand it, then, the eligibility qualification of past office holding applies to the four general offices, the vice presidents and the business agents?

The Witness: That's correct, your Honor.

Mr. Lurie: If your Honor please, business agents, regardless of whether or not they should be deemed offi-

cers, business agents are specifically made members of the assembly by the bylaws.

The Court: Yes. But the qualification requirement doesn't apply to members of the assembly, does it?

Mr. Lurie: No, no. But I mean they were members of the assembly by dint of being business agents whether one considered them officers or not.

The Court: That fact wouldn't make applicable to them the qualification requirement.

[fol. 79]

Mr. Lurie: I'm sorry, I don't understand.

The Court: Well, a business agent can't be elected unless he's been a member of the assembly or the executive board or has served for at least one term on the executive board, the assembly or the old shop delegate's council.

Mr. Lurie: That is correct.

The Court: The reason that he is subject to those qualification requirements is that he is considered to be an officer, not that he is considered to be a member of the assembly.

Mr. Lurie: Absolutely.

The Court: I think we understand each other.

Go ahead, Mr. Kushner.

Mr. Kushner: Your Honor, I think Mr. Lurie may agree with me that the term "officer" in this bylaw, which requires prior service, has been construed by the union to mean paid officer and since the vice presidents and general officers and business agents are all paid and full time, they are officers.

Is that correct?

Mr. Lurie: There is no objection.

The Court: Yes.

[fol. 80]

By Mr. Kushner:

Q Mr. Smith, there are notations at the bottom of some of these nomination acceptance certificates in Exhibit 44. For example, at the bottom of one Kenneth Davis' certificate there appears "no record of assembly membership."

Is that notation in your handwritting? A Yes, it is.

Q Is is correct that if you found no record of assembly membership either in the 1962 assembly list or as far as your memory went, you noted "no record of assembly membership" at the bottom of a certificate? A That's correct.

Q When did you surrender these certificates and to whom after you had checked eligibility? A As soon as they were checked for eligibility, which was immediately after the nomination meetings, the folders with all the acceptance certificates were turned over either to the secretary-treasurer to give to the Election & Objections Committee or directly to the Election & Objections Committee.

Q Do you recall to whom? A Usually the chairman [fol. 81] of the Election & Objections Committee or Mr. Marley, who was secretary-treasurer.

Q You don't recall whether you gave it to Mr. Marley or to Mr. Cohn? A No, I don't.

The Court: Mr. Cohn is the chairman of the committee?

The Witness: That's correct.

The Court: And Mr. Marley is the secretary-treasurer?

The Witness: Was the secretary-treasurer at the time.

The Court: Was.

Q Prior to the 1965 election of Local 6, in other words, in other elections, did you also check the eligibility of nominees for office?

Mr. Lurie: Objection.

The Court: Read the question.

(Question read.)

The Court: I will take it. Overruled.

A In the same manner as was done in the 1965 election, yes.

Q So that, for example, in the 1962 election, how would you have checked this prior service requirement? [fol. 82] A By checking a prior election return, result.

Q And noting at the bottom of the nomination acceptance certificate if that prior election result didn't show assembly membership and if your memory didn't indicate such membership? A Yes, sir.

Q In how many prior elections did you check eligibility? A I believe the first one I was involved in in that capacity was the 1954 election.

Q So that— A From 1954 on.

Q So that you checked eligibility in the 1954 election, in the 1954 election; is that correct? A That's correct.

Q In the 1959 election? A That's correct.

Q And in the 1962 election and in the 1965 election? A That's correct.

Q In any of these elections, from 1954, 1956, 1959 and 1962, do you recall whether anyone nominated for office [fol. 83] was ruled eligible solely because he had been a member of the shop delegates council?

* * * *

[fol. 84] * * *

The Court: Technically, the form of the question is bad. Was it ruled that he satisfied the office holding qualification because he had held office in the shop delegates council?

Mr. Kushner: I will reframe the question.

The Court: Do you remember whether there was any such incident, Mr. Smith?

A I believe there was one. I may have this thing turned around in my mind, but I recall an incident one time [fol. 85] where a nominee produced a shop delegate's certificate as showing that he had been a member of the shop delegates council and was declared eligible to run for an office.

Q Do you recall the year? A It may have been 1954 or 19—I don't recall the year. It was a couple of elections back, at least.

Q Do you recall any other instances? A No, I don't.

The Court: Mr. Smith, how does it happen that there is an election in 1956? I would have thought '51, '54, '57.

The Witness: Well, we used to have it every two years and then in one of the changes in the bylaws, it was changed to a three-year term. So it went from '54 to '56, and then from '56 to '59.

The Court: It went from '51 to '54?

The Witness: That's right. The '51 period, your Honor, the union was under a trusteeship in the period there and that may have turned the timetable around as far as elections go.

* * * *

[fol. 87]

A The Exhibit 45 is attendance record sheets of the assembly delegates elected in the 1962 election.

Q For what period do these sheets cover attendance? A This runs from June 21, 1962, through April 6, 1965.

Q Does it record attendance at all assembly meetings held during that period? A It does.

Q How did you prepare these records? A Assembly delegates receive a supper remuneration and they're paid by check. Those checks that remain at the end of a day assumedly didn't attend the assembly meeting and they would be deemed absent, unless they were excused, where I would get special notice. All those that picked up their supper remuneration were deemed as present.

Q So your assumption was that if someone didn't pick up his check at a particular meeting he was absent? A Yes, sir.

* * * * *

[fol. 88] * * *

Q Mr. Smith, I was asking you about various notations which appear. On the first page of this exhibit for identification, which is 45, the name Bardeguez is stricken. Do you know the reason? A Yes. He was a member of the assembly and sometime during that period he was appointed or—yes, appointed a business agent and [fol. 89] this attendance sheet carried only those that were members of the assembly other than the officers.

Q Exhibit 45 does not record attendance by the paid officers at assembly sessions? A That's right.

Q Right.

Now, there is a notation D. C. next to a number of names. What does that notation mean? A It means that they were elected from the assembly to be representatives on the department committees.

Q And the notation E. B. appears next to other names. What does that notation mean? A It would be those assembly members elected by—from the assembly to be representatives on the executive board.

Q Next to the name of each person his hotel is listed, is that correct? A That's correct. The shop of employment.

Q Also if there is an "A" next to a given meeting and a person's name, that means absent? A That's correct.

Q And a check means present? A That's correct.

* * * *

[fol. 93] * * *

Cross-examination by Mr. Lurie:

Q Mr. Smith, earlier in your testimony you stated that you checked the assembly attendance by checking the number of checks that were to be paid to the assembly members which remained in your possession, is that right? A That's correct.

Q How much did the assembly members get paid for attending assembly meetings? A For the night sessions, there was $5 supper remuneration.

Q And for the all-day sessions, when held? A $20.

Q In making up your list, which is now Plaintiff's Exhibit 41 in evidence, of assembly members eligible to run for office at the time of the 1965 election, you said that you made it up from, among other things, the 1954 and the 1956 reports of the election and objections com-[fol. 94] mittee, is that right? A That's correct.

Q Actually, in 1954 and in 1956 there were delegates elected to a convention, were there not? A Yes, there were.

Q Under the bylaws were those delegates ultimately assembly members? A Yes, they were.

Q Did you include those two lists in computing your 543? Are those people included on Exhibit 41? A No, they are not.

Q So that those people would be additional assembly members who would be eligible for office? A That's correct.

Q That is, those who were not subsequently elected? A That's correct.

Q At a future date to the assembly and therefore would be on this list, is that right? A That's correct.

Q You stated that you had the nomination slips sometime early in May of 1965. Have you had occasion to [fol. 95] think about that? A Yes. It was earlier than that. In recollection, it probably was in April sometime, because the nominations were held in April.

* * * *

Q Mr. Smith, I show you a document marked Defendant's Exhibit A for identification and ask you if you prepared that list. A I did.

Q When did you prepare it? A Oh, possibly a couple [fol. 96] of months ago, or a month or more.

Q What does that list consist of? A This list consists of all names that were culled from the union's publication showing that they were either shop delegates or executive board or department committee members and eligible to run—and are still currently in good standing in the union and eligible, at least for that qualification, to run for paid office. We also used the reports of the Election & Objections Committee to pull these names.

Q Did you use any other sources that you can remember offhand? A Yes. We had found an old shop delegates file, a metal file, that contained 3 x 5 cards, and we used those cards to check names and we got some names out of that.

Q Are any of the names on this list also included on the list which is Plaintiff's Exhibit 41 in evidence? A Yes.

Q They are included? A Yes, these names are included.

Q So that this list will also include all of those? [fol. 97] A That's correct.

Q How many names, in total, are on that list? A 1,855.

Q Does that list also include individuals who were elected to the 1965 assembly? A Yes, it does include some of them.

Q How many of those are additional names? A I believe there are about 130, or possibly a little more, that are elected for the first time in the assembly that appear here.

Q So that those people who are elected for the first time would not have been eligible to run for paid office in 1965 by virtue of being members of the assembly? A That's correct.

The Court: So you get a net figure by deducting them from the total?

Mr. Lurie: That is right, your Honor.

Q What would you get roughly as a net figure? A Oh, about 1720, or thereabouts.

Mr. Kushner: I move to strike all previous testimony [fol. 98] of Mr. Smith, your Honor, which gave numbers of members. I expected that this exhibit for identification would be offered in evidence and that I would have a full opportunity for voir dire. In view of what has transpired here, it appears he is just reading off numbers from a list which may never be entered in evidence.

Mr. Lurie: I offer it in evidence.

The Court: I overrule the objection.

Mr. Kushner: May I examine on voir dire, your Honor?

The Court: Yes.

Voir Dire Examination by Mr. Kushner:

* * * *

[fol. 101] * * *

Q Is it also correct that all the names appearing on Exhibit 41 also appear in Exhibit A for identification? A That's correct.

Q Have you any work sheet showing, where these names on Exhibit A for identification were culled? A Work sheets? The work sheets that were supplied originally to the government, that were culled from the magazine and the newspaper, copies of the Election & Objections Committee reports for 1954, 1956, '59, '62, the 1951 election results—I don't know what the exhibit number is—that was the source of getting all these names.

Q Any other sources? A We had an old file, metal [fol. 102] file, a 3 x 5 file that was located sometime ago, that we checked these cards against the roster or list of names we had of the members of the union.

Q Do you know how many names you got from that card file? A No, I do not.

Q Do you have that card file with you? A I believe you have that file.

Q You are referring now to what you brought with you to your deposition in my office? A That's correct.

Q And you culled names from that card file? A That's correct.

Q Did you cull names from any other sources than those you just mentioned? A I believe we also had minutes of the old shop delegates council. I believe there were two sets of minutes. I don't recall whether we used any of the names in that listing or not, but it was a potential source of names, yes.

Q Any other sources? A No, other than the newspapers, the union publications, the card file, and the Elec- [fol. 103] tion & Objections Committee reports, I don't believe there was anything.

Q What newspapers did you go through? A The Hotel and Club Voice.

Q For what periods? A We started in 1940 through 1951, I believe.

* * * * *

[fol. 104] * * *

Q So then in preparing Defendant's Exhibit A for identification you took the names which appeared on Exhibits 42 and 43? A That's correct.

Q And then you didn't have to go through newspapers again for 1940 to 1947, is that right, in preparing Defendant's Exhibit A for identification? A No. We used this as the source (indicating), which was from the newspaper.

Q "This" meaning Exhibits 42 and 43? A Correct.

Q What period did you go through newspapers for? A From 1940 through 1951.

Q Mr. Smith, let's get this straight: Tell me again, what did you do in compiling Defendant's Exhibit A for identification? A We culled the newspapers, the union publications, we had a 3 x 5 card file of the old shop delegates council, we used the reports of the Election & [fol. 105] Objections Committee for the elections in the years 1954 through the election of 1965. I think that's about it.

Q Who helped you in this? A Various office staff people in the office, the union.

Q Do you know how many names on Defendant's Exhibit A for identification were obtained from Exhibits 42 and 43? A No, I do not.

Q Do you know how many names on Defendant's Exhibit A for identification were obtained from Exhibit 41? A There are 543 names here.

Q So that all 543 would also appear in Defendant's Exhibit A for identification? A That's correct.

Q Do you know how many names on Defendant's Exhibit A for identification were obtained from the metal cabinet file you described? A I do not.

Q Do you know how many names on Defendant's Exhibit A for identification were obtained from the two shop delegates' file folders you referred to? A I do [fol. 106] not.

Q Do you know how many names on Defendant's Exhibit A for identification were obtained from the Local 6 newspapers for 1948? A For the year 1948?

Q Yes. A I do not know.

Q Do you know how many names on Defendant's Exhibit A for identification were obtained from the Local 6 newspapers for 1949? A I don't.

[fol. 107]

Q Do you know if you examined the Local 6 newspapers for 1949 to obtain names for Defendant's Exhibit A for identification? A Yes, we did.

Q Did you also examine Local 6 newspapers for 1950? A Yes.

Q To obtain names for Defendant's Exhibit A for identification? A Yes.

Q Do you know how many names you obtained from the 1950 newspapers? A I don't.

Q Did you examine the Local 6 newspapers for 1951 to obtain names for Defendant's Exhibit A for identification? A We did, yes.

Q Do you know how many names your obtained from the 1951 newspapers? A I don't.

Q Do you have any work sheets indicating break downs? A As far as counts for the individual years or where the particular grouping came from, I don't. Other [fol. 108] than the 543 names that are here.

Q Which is Exhibit 41 for identification—Exhibit 41, excuse me.

Mr. Kushner: Your Honor, I object to the introduction of Exhibit A for identification in evidence. It is compiled from sources which haven't been introduced into evidence. There is no way of determining, from what Mr. Smith testifies, just what the breakdown is from each source.

The Court: I will admit it. I will overrule the objection. If you want the underlying material to be made available to you or your associates or colleagues or assistants, I will order that to be done.

* * * *

[fol. 122] * * *

JAMES MARLEY * * *.

[fol. 123]

Direct Examination * * *:

Q Mr. Marley, are you president of Local 6? A I am.

Q How long have you held that office? A Since June of 1965.

Q Have you held any other offices in Local 6? A I have.

Q Can you name the offices and the periods, please? A Prior to president, I held the office of secretary-treasurer, I believe; from 1953 until June of 1965.

Prior to that, I held the office of general organizer. I

am not sure of the period. It was a short period, perhaps eight or nine months or a year.

Prior to that I was a business agent. And prior to that, I was a delegate from the Waldorf Astoria.

I also was a member of the executive board, and a member of the old shop delegates council.

Q Does that complete the list? A In official. I [fol. 124] have a lot of other titles in the union. I am a trustee of the club pension fund. I'm secretary of the club pension fund. I am secretary of the Local 6 insurance fund. I am a vice-president of the New York Hotel Trades Council. I am a delegate to the local joint executive board. Most of these positions, of course, are unpaid positions. If you're asking for all of the positions, I think this would cover quite a few. There are some more.

Q What year were you initiated into Local 6? A My membership book shows me coming into Local 6 in 1940.

The Court: When were you made a business agent, Mr. Marley?

The Witness: In March of 1944, sir.

The Court: So I take it for the four years before you became a business agent you were working in one of the trades represented by Local 6?

The Witness: Yes, your Honor.

* * * *

[fol. 126] * * *

Q What geographical area does Local 6 cover? A It covers the City of New York.

Q All five boroughs? A Yes, we have none in Staten Island.

The Court: Excuse me. Mr. Marley, tell me, because I don't know very much about these things, what is a delegate?

The Witness: A delegate?

The Court: Yes.

The Witness: A delegate—

[fol. 127]

The Court: You said you were the delegate.

The Witness: Yes. Well, a delegate in our union we use the term delegate, in other unions some people use shop steward.

The Court: Oh, yes, I understand.

The Witness: A delegate is one in our union who is employed in the shop. He is usually elected by the members of his department and it is his job to work with the business agent in the particular shop to bring attention of the business agent's to grievances and, in other words, to see that the members come to meetings and keep them informed of what is happening in the union.

The Court: He is sort of the active leader of the members in the shop he works?

The Witness: That is correct, your Honor. In the particular unit in which he is employed.

The Court: All right. Thank you.

Q What trades are covered in Local 6? A All of the trades having to do with the feeding of people in dining rooms. For instance, you would have captains, waiters, waitresses, hostesses, busboys, anything in the dining [fol. 128] room with the exception of head waiters, who are in a supervisory capacity.

In the kitchen, it would cover, again with the exception of the executive chef, it would cover all of the cooking staff, the chefs, the cooks, dishwashers, stewards, glass washers, pantry and so forth in the kitchen.

And the housekeeping it would cover, again with the exception of the executives, chambermaids, bath maids, housemen and any other people that might be in the housekeeping department.

In the bar, it covers bartenders, bar boys.

Did I give you all of the departments? The banquet department, which is actually part of the dining but covers all of the people in the banquet department, again with the exception of the head waiter and some of the supervisory capacities.

Mr. Lurie: How about in the club?

The Witness: In the club department, the private membership clubs, it covers all departments I have mentioned in the private membership club and covers some other departments that I have not mentioned in the

[fol. 129] hotel. For instance, we take in categories in the clubs that we would not have in the hotels that would belong to another union.

Q Did you mention housekeeping? A I did mention housekeeping, yes, sir.

Q You mentioned bar? A I mentioned bar. That one I would never forget.

Q And Local 6 has jurisdiction over all these trades if they are situated in hotels or motels or clubs within the City of New York? A That is correct, sir.

The Court: Private clubs, you take in more categories than in hotels?

The Witness: Yes, sir. Because a private club contracts are with Local 6, not with the New York Hotel Trades Council.

The Court: You take in telephone operators?

The Witness: We would take in telephone operators, elevator operators and so forth, right.

The Court: I see.

Q What is the function of a department delegate in [fol. 130] Local 6? A Of a department delegate?

Q Yes. A The function of a deparement delegate is after having been elected by the people within his department or the unit of his department, is to take up with the business agent grievances that may exist with the head of his department, to make sure that the contract is carried out and is not violated. If it is violated, to make sure that it is reported to the union.

In addition to this, he has functions outside of this and outside of his shop. He is involved in meetings of his particular unit, he is involved in meetings of his particular hotel, he is involved in meetings of his particular craft, he is involved in meetings of his district, and he is also involved in a great many of the things in the day-to-day life of the union, joining in delegations for legislation or helping out in the community projects, and this, in essence, is a few of the duties of a delegate in the department.

The Court: He is not a paid officer, though?

[fol. 131] The Witness: No, your Honor, he is not paid.

The Court: And therefore he is working at a job from day-to-day?

The Witness: Yes, sir, yes, your Honor.

The Court: In a hotel?

The Witness: Yes, he is unpaid.

Q How are department delegates chosen in Local 6? A Department delegates are chosen in Local 6 at a meeting of their department or the unit of that department.

Q You would say that they were chosen by the representative units? A Units?

Q Yes. Can you give some examples of what a unit might be? A Well, you might have—well, take a hotel that has four dining rooms. All of the people in that—in those dining rooms are members of Local 6. All are members of the dining room department. But since there are four dining rooms, sometimes working on different shifts, it is obvious that one delegate for that dining room department couldn't handle it. Therefore, within the speci- [fol. 132] fied unit in this particular room, you would have a delegate. In another room you would have a delegate. Both are dining room delegates but each is a unit for each individual room.

I hope I am making myself clear, sir. If I am not, let me know.

Q I certainly think you are. A Thank you.

Q Each dining room would choose its own delegate under the example you gave? A Right.

The Court: Each dining room in those examples would be a shop?

The Witness: That's correct.

The Court: The shop delegate?

The Witness: That's right.

Mr. Lurie: If your Honor please, each shift, actually, in many instances of each dining room.

The Court: You mean there might be—

The Witness: There might be—

The Court: —two shop delegates for the same physical dining room?

The Witness: Right, because the spread may run right [fol. 133] through breakfast, through supper.

The Court: Yes.

Q Can you go from the department delegate and describe briefly the structural setup of Local 6, the political structure. I assume that the department delegate is the basic unit, is that right? A I would say so, yes.

Q The shop delegate. Please go ahead and describe briefly the rest of the structure. A Going up the ladder?

Q Yes, sir. A Well, you would have first of all the delegate. You would then have—are you talking now within the shop or within the union as a whole?

Q Within the union as a whole going up from the shop delegate. A It goes up from the shop delegate through the district council—

Mr. Lurie: If your Honor please, I think it would be better if Mr. Marley understood. I think Mr. Kushner wants a complete description both in the shop and up through the union.

The Court: I don't know, Mr. Kushner, you are doing the examining. Do you want to accept the amend-
[fol. 134] ment?

Mr. Kushner: Your Honor, I will accept it.

The Court: All right.

Mr. Kushner: With no further amendment. Can you go ahead on that basis?

The Witness: No, I don't understand.

The Court: All right.

Mr. Lurie: Let me make clear: There is a shop delegate. Now, in the shop there is organization before you get out of the shop itself.

The Witness: This is the question. I understand you, yes.

In the shop, there is a delegate unless—and let's for simplicity say there is a delegate in each unit of a department. He operates within that unit for dining room. He will take up dining room problems within his own dining room. The other delegate in another dining room will take up problems there. However, from this you will then have a group of dining room delegates who may meet in the shop to take up general dining room problems.

In addition to this, you then have all of the other delegates in the housekeeping department, in the bar de-
[fol. 135] partment. There you have a shop committee.

This is composed of the delegates, all of the delegates of the various crafts, with a shop chairman who deals with ——which deals with all of the overall problems in the hotel. For instance, you may have a problem affecting only the dining room that could be settled at the head waiter level by the dining room delegate and his business agent. But also you may have a problem that will affect every worker in the hotel, so you would come through the delegates of the dining room department, who in conjunction with all of the other delegates would form the shop committee, and with a shop chairman would take it up with top management along with their union representative.

That's the setup in the shop.

[fol. 136]

Q Who chooses the shop chairman? A The delegates.

Q All right, please go ahead. A This is within the shop. Now I suppose you want me to come to the union?

Q Yes. A All of these delegates would be members of the district council and they would serve in that district council along with members of the assembly from that particular district, and this would be the district setup.

The Court: What is the district, Mr. Marley? Is that each borough of Manhattan?

The Witness: No, sir. That is each geographical district as set up by the union, which is changed from time to time, and usually includes a group of hotels in that district, because of geography, although that is not always possible.

In the district councils they meet and there the officers of that district who are elected by the members, the business agent of that district, the vice-president of that district, who are elected by the members, conduct the district council meeting and the reason for having district [fol. 137] councils is to give, first of all, the members within that district an opportunity to have a knowledge of what is happening in other hotels within their district and also to be able to get up and question their officers, since one officer in one hotel might be doing a good job and another officer in another hotel in that district, his

members might feel he was not doing such a good job. This gives the members an opportunity to confront the officers of the district to see that they are carrying out their job.

From the district council, we would move then to the assembly, I believe, which meets each quarter, or oftener, if necessary, and this is the highest body in the union, and this actually runs the union and has veto power over any decision anyone might make.

Q How is the assembly elected? A The assembly is elected by the membership on a districtwide basis, on the basis of one per 75 members actively employed.

Q Is there also a further provision allowing for representation among department members in a district according to the size they have to the total number in the dis-
[fol. 138] trict? A Yes, it is one per 75 with safeguards to see that no one craft will overpower another craft and with safeguards to see one hotel won't overpower another hotel. There is representation for practically every hotel and there is representation for every craft.

Q Please go ahead. Out of the assembly we elect an executive board that meets monthly and the executive board on its meetings monthly, makes certain decisions. All of its decisions are subject to the approval of the assembly. You then have the administrative board, which is composed of the vice-presidents and general officers of the union who handle the day-to-day work of the union, who are accountable to the executive board, and from the executive board up to the assembly.

Q Do you want to add the union delegates to the hotel and motel trades council to the administrative board, or aren't they members? A Yes, some of them are members.

Q Go ahead. Does that complete the description? A I believe so.

[fol. 139]

Q Mr. Lurie suggests I ask you about the general officers. Tell us about them. A The administrative board is composed of the general officers and the vice presidents and the delegates to the hotel trades council. The general

officers are the president, the sercetary-treasurer, the general organizer, and the recording secretary. They meet from time to time, make recommendations to the administrative board. The administrative board meets weekly.

The administrative board then carries out the day-to-day work of the union between meetings of the executive board and the executive board, in turn, must report to the assembly for its approval of any actions taken.

Q Do you want to fill out the description with the functions of the vice-presidents and business agents? A Yes. The vice president is in charge of the district, and is elected out of the district and is in charge of the busines agents within that district. He supervises the business agents, sometimes has an assignment for certain hotels. The business agents are assigned to the hotels, and/or [fol. 140] clubs, and carry on the duties of a business agent within their specific assignment under the supervision of the vice-president.

Q Does that complete the description? A Yes, I believe it does.

The Court: Mr. Marley, I take it the vice-presidents are not paid either, are they?

A Oh, yes, your Honor, vice-presidents are paid.

The Court: I see.

Q Is it correct that vice-presidents, sir—

The Court: That's right, and business agents are paid?

The Witness: Yes, sir.

Q They are full-time people, aren't they? A Yes, sir.

Q They devote all their time to their jobs as vice-presidents or business agents? A Yes, sir.

Q Let's get back to the assembly for a moment. You testified a moment ago, I believe, that the assembly has the power of veto over actions of the executive board, is that correct? A That is correct.

[fol. 141]

Q Can you recall any instance in the years 1962 to May 1965 when the assembly did veto any action of the executive board?

Mr. Lurie: Objection.

The Court: Oh, I will permit it. Overruled.

A Not at the moment. There may have been, but I don't recall it at the moment.

Q Would you say that the essential function of the assembly is to hear and approve reports by the executive board or the administrative board? A No, I don't think that is the essential function.

Q What would you say is the essential function of the assembly? A I think the essential function of the assembly is to run the union.

Q It does this by meeting how many times a year? A At least four times a year, although it may meet oftener.

Q Did it meet oftener in the period from January 1964 to May 1965? A I don't know. I would have to consult the records.

[fol. 142]

Q Do you recall whether the by-laws of Local 6 provide that absence of an assembly member at two successive meetings of the assembly without reasonable excuse results in his automatic expulsion from the assembly? A Yes, the by-laws contain such a clause.

Q Do you remember if from the period 1962 to May 1965 any assembly members were expelled for absence at two successive meetings without reasonable excuse?

Mr. Lurie: Objection.

The Court: I will permit it. Overruled.

A Do you want to give me the dates?

Q Would you like the question read back or do you remember it? A I would like it read back.

(Question read.)

A I don't think any assembly members were expelled for that reason during that period—I don't believe so.

The Court: Where will I find that provision, Mr. Kushner, about getting expelled—

Mr. Kushner: Your Honor, I believe you will find [fol. 143] that on page 17, and I will check it in a moment.

(Pause.)

The Court: Yes, I have it. You are right. Thank you.

Q Mr. Marley, do you know what constitutes a quorum of the assembly? A Yes, I do.

Q What does? A More than 50 per cent, a majority of the assembly.

Q A majority of the members attending? A Yes.

Q Do you recall whether there were any occasions during the period 1962 to May 1965 when assembly meetings lacked a quorum? A There may have been instances. I don't recall specific meetings where that was so, but there may have been instances.

Q Do you recall whether it was determined at any of these meetings that there was a quorum lacking? A I don't think so.

The Court: Mr. Kushner, you said something about [fol. 144] members attending the meeting. I take it the quorum is 50 per cent of the total membership of the assembly, isn't it, Mr. Marley?

The Witness: That is correct, sir.

Mr. Kushner: If I said that, your Honor, I was in error. I am referring to page 19 of Exhibit 1, Section 6 of Article 5.

The Court: If there are not present at a meeting 50 per cent of the total membership of the assembly, then the assembly doesn't have a quorum?

The Witness: It would not have a quorum.

Q Incidentally, does the assembly receive any training classes in collective bargaining? A The assembly receives a great deal of training in practically everything. To be a member of Local 6's assembly—

Mr. Kushner: I move to strike as non-responsive, your Honor.

The Court: Well, I will let it stand. I suppose Mr. Marley, what council is inquiring about is, are there any formal classes for formal instruction in collective bargaining given to the assembly.

The Witness: Not to the assembly as such, but to union members, including the assembly. However, a [fol. 145] great many of the assembly are involved in direct negotiations with the employer.

The Court: I think Mr. Kushner is just asking about classes, is that right?

Mr. Kushner: Yes, your Honor.

The Court: Mr. Marley says there are classes and some members of the assembly attend them, but there are no classes specifically for the assembly, as I understand it.

The Witness: No formal classes, your Hnor.

Q You spoke a while ago about the shop delegates council. Is it correct that you said you were a member of the shop delegates council? A Yes, I was.

Q Do you recall when the shop delegates council came into existence? A That is going back far, far, far—that is more than a quarter of a century ago and to recall exactly, I couldn't do it. I have a vague remembrance of it being called the shop delegates council in the very early days of the union.

Q Do you recall the method by which the shop delegates council was chosen prior to 1947? A If there was [fol. 146] more than one method, then I am referring to more than one method. A In 1946, '45, I would say that every delegate of a unit in a hotel or club was a member of the shop delegates council because of the fact that he was elected by his fellow members within that unit.

Q How about prior to 1945? A My recollection is that this was prior to 1945. As a matter of fact, I believe that this was so in 1940, when I took my book in the union.

Q Under that method, was it possible that one shop delegate might represent as few as five or ten constituents? A I believe he might represent—I am trusting to memory—he might represent six constituents or, if there were five or less there, that he would be appointed. This is from recollection from a very long time ago.

Q Would it be accurate to say that the shop delegate in those days represented the same basic unit as a department delegate does today in Local 6? A I believe that would be so.

[fol. 147]

The Court: I am a little confused. We have now gotten to a department delegate. I thought we had talked about a unit or a shop delegate and I thought we had talked about a district delegate, did we?

Mr. Kushner: Your Honor, I think that the department delegate from 1951 onward has been what Mr. Marley has called a shop delegate prior to 1951.

Q Mr. Marley, would you clarify that? A He has always been known as a delegate and the unit is much the same. As I explained before, in a dining room—

The Court: If he was in Peacock Alley, he would be the shop delegate for the Peacock Alley dining room?

The Witness: Yes, your Honor. He would belong to the dining room department. He would not be the delegate for the whole department in the hotel; he would only be the delegate for that particular unit coming out of that department.

Mr. Lurie: In the union the expression shop delegate and department delegate was used interchangeably. If a [fol. 148] person was a delegate, he was called either the shop or the department delegate. It was the shop chairman who would be different. The shop chairman would be the chairman of a group of delegates. I think that is correct, isn't it, Mr. Marley?

The Witness: That's correct.

The Court: Well, I am confused because department I though referred to a very big organization, would include more than a single dining room.

Mr. Lurie: If your Honor please, there is a department in the union, there is a department in the hotel and then there is a department in—there are breakdowns of the departments. In each hotel the union has what they call department delegates—

The Court: But it is not union department?

Mr. Lurie: No, your Honor.

The Court: All right. I was taking it that Mr. Kushner was talking about union department.

Mr. Lurie: They are union department delegates.

[fol. 149] The Court: They are part of the union department, all right.

Mr. Kushner: Section 4 of Article 2 of the by-laws, Exhibit 1, says that "each established and recognized unit of a hotel, motel or club having five or more members in good standing in the union shall be entitled to elect one department delegate."

The Court: Where is that?

Mr. Kushner: Section 4 of Article 3 on page 4, at the very bottom of page 4, your Honor.

The Court: Well, that might mean a delegate to the union department, perhaps.

Mr. Lurie: In effect, that is what it is. He is a delegate in the shop representing the workers. He also would be, if there were a meeting, as the union does call them, of department delegates throughout the city, he would be the one to attend.

The Court: Delegate to the department?

Mr. Lurie: That is correct.

The Court: All right.

* * * *

[fol. 150] * * *

Mr. Lurie: I am sorry, sir. We have the prior by-laws of the union, each of which makes reference in one form or another to the shop delegates council, and I am producing for Mr. Kushner the original by-laws of the union, undated, the second by-laws of the the union, dated November 15-16, 1941, the third by-laws of the union, adopted at the convention of the union in December of 1943, and that completes the by-laws of the union from the beginning of the union through the present time, [fol. 151] if your Honor please, with the exception of the amendment that took place subsequent to the election.

Mr. Kushner: May we have these three documents marked for identification, please. These are the documents that Mr. Lurie has just given to me.

Mr. Lurie: If your Honor please, I will have no objection to their being directly admitted into evidence.

The Court: Do you want to offer them as 47A, B and C?

Mr. Kushner: Fine, your Honor.

Q I assume you have read these documents which are being offered as Exhibits 47, 47A and 47B (handing)? A No, sir.

Q You have not read them? A No, sir, I have no.

The Court: Without objection, they will be received in evidence.

(Plaintiff's Exhibits 47, 47A and 47B were received in evidence.)

Q Mr. Marley, is it correct that in the election of [fol. 152] May 19, 1965, the administration ran a complete set of candidates for assembly and for general office and for vice-president and business agent?

Mr. Lurie: Objection, if your Honor please. The administration ran no ticket in any election. There may be a group of people who were part of a party calling themselves the A slate, but the administration doesn't run candidates for office.

Mr. Kushner: Your Honor, I will reframe the question.

The Court: I will sustain an objection as to form.

Q Is it correct that in the 1965 election the administration party ran a complete set of candidates for assembly, general office and vice-president and business agent? A There was a complete slate running in Row A, and by that I take it that is the administration party you are referring to?

Q Yes, sir. So that statement is correct? A Yes, sir.

Q Is it also correct that every candidate on Row A [fol. 153] won in the 1965 election? A Yes, sir.

Q Is it correct that in 1962 the administration party ran a complete slate of candidates for assembly, for general office, for vice-president and for business agent? A Yes, sir.

Q And is it correct that in the 1962 election every candidate on the administration Row A won? A Yes, sir.

Q And I am including candidates for assembly as well as for general office and business agent. A I understand.

Q You understood that? A I understood that.

Q In 1959 did the administration party run a complete set of candidates for general office, for vice-president, for business agent and for assembly? A I believe they did.

Q Did any administration candidate on Row A in the 1959 election lose? A I don't believe so.

[fol. 154]

Q In the elections in 1959, 1962 and 1965 the assembly candidates ran together with the candidates for general office and vice-president and business agent? A That is correct.

Q In the 1956 election did the assembly candidates run in a separate election than the candidates for general office, vice-president and business agent? A I don't know if the year is correct, but I know that the assembly and the executive board at one time ran in two separate elections. I don't know exactly the year when that ceased.

Q I hand you Exhibit 21 and Exhibit 26 and ask you if those exhibits refresh your recollection? A They do.

Q What is your answer? A The answer is yes.

Q In 1956 the candidates for assembly ran in February, is that right? A That is correct.

Q Did the administration party put up a complete slate of candidates for assembly in 1956?

[fol. 155] Mr. Lurie: If your Honor please, I have refrained from making objections because I don't want to appear too obstreperous, but I don't know whether Mr. Kushner is trying to prove in this case that winning an election is a vice or not or that because the membership has voted to elect this administration on occasion, from time to time, is a vice or not. I cannot for the life of me see the relevance of this last series of questions about elections which are not in issue here and that doesn't go to who was elected, to who is eligible to run, which is one of the issues here. I cannot see how we clutter this record even further with Mr. Kushner's wild vagueness.

Mr. Kushner: Few things could be more relevant to the issues in this case, your Honor, so long as the only possible way a union member presently in Local 6 can

stand for higher office is to get elected to the assembly and so long as the administration runs a complete set of candidates for the assembly and thereby controls that access to higher office it is quite relevant to determine what has been done in past elections.

The Court: Well, I am going to take a very liberal [fol. 156] view of the evidence without indicating in the slightest that it is entitled to any weight or, if so, to what weight. I will overrule the objection and permit the answer.

Mr. Kushner: Your Honor, could the last question be read back?

The Court: Yes.

(Question read.)

A In 1956 there was a complete slate of candidates running on Row A for the assembly.

Q And Row A was the administration slate, is that right? A Row A was the administration party.

Q Did any candidate on the administration party's Row A for assembly lose in the 1956 election? A I don't have the results here, but I believe all candidates on Row A were elected.

Q In 1956 did the administration party have a complete set of candidates for general office, vice-president and business agent? A I believe that is correct.

Q Did any of the administration party candidates lose in the 1956 election? A I don't have the results here, but I believe all of the candidates running on Row [fol. 157] A for the administration party were elected.

Q In 1954 did the administration party put up a complete slate of candidates for the assembly? A Excuse me. I would like to just take one look at this for a moment (indicating).

Q Please do. I will pause and wait.

(Pause.)

The Court: Would you rather take a few minutes recess, Mr. Marley?

The Witness: Yes, I would.

The Court: All right. We will take a few minutes recess.

(Recess taken.)

Mr. Kushner: Your Honor, could the reporter read back the last question?

(Question read.)

A I believe they did. You are not referring to this (indicating)?

Q What exhibit are you referring to? A This is Exhibit 21.

Q No, sir. Do Exhibits 25 and 25A help you (handing)? Is your answer that it did? A It did.

[fol. 158]

Q Did any administration candidate—did any administration party candidate for assembly lose in the 1954 election? A I believe all of the candidates running in Row A were elected in that election.

Q In 1954 did the administration party put up a complete slate of candidates for general office, vice-president and business agent?

Mr. Kushner: May I have this marked for identification, please?

(Plaintiff's Exhibit 48 marked for identification.)

Q Perhaps this exhibit will help you (handing). A Yes, it did.

Q And did any candidate of the administration party lose in the 1954 election? A No, not to my knowledge.

Mr. Kushner: I offer Exhibit 48 for identification in evidence. It is two pages from the Hotel and Club Voice, issue of May 22, 1954, which lists the candidates for general office and vice-president and business agent.

Mr. Lurie: No objection.

[fol. 158a]

The Court: Without objection, it will be received.

(Plaintiff's Exhibit 48 was received in evidence.)

[fol. 159]

Q In 1951, did the Administration party put up a complete slate of candidates for the assembly? A To the best of my knowledge, they did.

Q Did any candidate for assembly put up by the administration party in 1951 lose that election? A I don't believe any candidate running in Row A lost in that election.

Q And Row A was of course the— A The administration party.

Q In 1951, did the administration put up a complete slate of candidates for general office, vice-president and business agent? A It did.

Q Did any candidate put up by the administration party lose? A No, sir.

Mr. Lurie: If your Honor please, just to clarify the record, where Mr. Marley talks about assembly elections in 1951, 1954 and 1956, he is really referring to election of delegates to the convention.

The Court: Convention delegates who became members of the assembly.

Mr. Lurie: That is right.

[fol. 160]

Q Mr. Marley, during what period of time were you secretary-treasurer of Local 6? A I believe from 19— some time in 1953, late in 1953, probably December of 1953, up until the election of 1965.

Q During that period, when you were secretary-treasurer, did you have anything to do with arranging caucuses for choosing candidates for the administration party's Row A? A No, sir, I did not.

Q Were you prior to the time that you were secretary-treasurer general organizer of Local 6? A No, sir.

Q You weren't? What office— A I beg your pardon. I thought you were repeating the question as it had to do with the general organizer's office.

Q But you were— A I was general organizer of the union for a short period. Probably a year or a little more.

Q As such you had nothing to do with organizing

caucuses to choose candidates on the administration party's row? A As general organizer, I didn't organize [fol. 161] caucuses.

Q Do you know if administration caucuses were held in 1965 to choose candidates for the administration Row A?

Mr. Lurie: Objection, if your Honor please.

The Court: Yes, it doesn't really make any difference, Mr. Kushner. I think I will sustain the objection.

Q Mr. Marley, did this requirement, that candidates for general office and for vice-president and business agent must have prior service on the assembly or shop delegate's council or executive board or present service on the assembly or executive board, apply to persons who were appointed to these offices? A Not necessarily, no.

Q So the by-law requirement concerning prior office holding didn't apply to persons appointed, right? A The by-law requirement applies only to members of the union running in the election. These are election requirements.

Q All right. Do you recall if any persons were appointed to paid office in Local 6 who lacked present or [fol. 162] prior service on the assembly or executive board or prior service on the shop delegate's council? A There may have been some.

Q Do you recall any? A Not at the moment.

Q Let me try and refresh your recollection. Interrogatory 7 propounded by plaintiff to defendant here asks:

> "State the following information with regard to Lubos Pavlista:
>
> "A. Date of initiation into defendant."
>
> The answer given is "April, 1952."
>
> "B. Period of service in shop delegate's council."
>
> The answer to B is "None."
>
> "C. Period of service in the assembly and district represented."
>
> The answer to C is "November, 1961 to the present. District 4."
>
> "D. Period of service on executive board."
>
> The answer is "None."

"E. Period of service as paid officer, title of each paid office held and period for which each office held."

[fol. 163]

The answer is, "November, 1961 to the present. Business agent."

"F. Whether said person was appointed or elected to each of said paid offices."

The answer is, "Appointed business agent and then elected business agent."

Q Does that refresh your recollection? A Yes, Mr. Pavlista was appointed—

Q In November, 1961? A Is it November, 1961?

Q That's what the answer says, and that doesn't refresh your memory? A No.

The Court: Well, if that is the answer—

A If that's the answer, that is the answer.

The Court: I mean, isn't the defendant bound by it whether it affects—

Mr. Kushner: Yes, your Honor.

The Court: Is that one that you already offered into evidence?

Mr. Kushner: No, I haven't, your Honor.

The Court: Do you offer it into evidence?

Mr. Kushner: I do.

The Court: Any objection?

[fol. 164]

Mr. Lurie: No objection.

The Court: Admitted.

Q Did you have anything to do with appointing Mr. Pavlista as business agent in November, 1961? A Yes.

Q What? A I would make a recommendation along with the other officers of the administrative board to the executive board and take it to the assembly for approval.

Q In making the recommendation, did you consider whether Mr. Pavlista had prior service in the assembly or shop delegate's council or executive board? A I didn't think I was required to.

Q So that you didn't consider it? A I didn't consider it.

The Court: Mr. Kushner, forgive me for interrupting. Is this the only instance you are going to develop?

Mr. Kushner: No, there is one other, your Honor.

The Court: Is it a business agent?

[fol. 165]

Mr. Kushner: Yes, sir.

(Discussion off the record.)

The Court: Back on the record now.

By Mr. Kushner:

Q Mr. Pavlista served continuously as business agent from November, 1961 to the present, did he not? A Yes, sir.

Q Do you recall the district or districts in which he served? A I believe he served in District 4. He may have served in other districts.

Q Isn't it a fact that Mr. Pavlista didn't run for election in the Local 6 election of 1962? A I don't believe he ran in 1962.

Q But yet he continued to serve as business agent, did he not? A He was later appointed by the assembly.

Q Let me try and clarify this, Mr. Marley. He was first appointed in November of 1961? A Yes, sir.

Q He didn't run for election in the 1962 election? A That is correct.

[fol. 166]

Q And you say that later he was appointed by the assembly again as a business agent? A He was reappointed by the assembly as a business agent sometime after the election took place.

Q Did you consider running him in the 1962 election?

Mr. Lurie: Objection, if your Honor please.

The Court: Yes, I will sustain the objection.

Q Incidentally, Mr. Marley, can you describe briefly the occasions under which persons may have to be appointed to paid office? One would be if there were a vacancy, is that correct? A That would be one.

Q Is it possible to appoint additional paid officers? A You mean without a vacancy?

Q Yes. A Yes, of course it is. If the need arises and there is a crisis in the union—or it doesn't have to be a crisis. If the need arises and it is a feeling of the administrative board that there should be appointments [fol. 167] in order to service the members well, and we do service our members well, if this need arises, we have no hesitation in going before the assembly and making a recommendation to that effect.

Q Has the need arisen? A Very often the need has arisen, yes.

The Court: You mean the number of vice-presidents and the number of business agents isn't fixed?

The Witness: Your Honor, the number of vice presidents and business agents is fixed at the time of the election for the purposes of election. However, if in the interim a need arises, if you bring in a New York Hilton and an Americana and so forth between elections, obviously there will be a need to have extra staff or if they—

The Court: You mean the assembly can create additional positions?

The Witness: Yes, your Honor.

The Court: Of vice-president and business agent?

The Witness: I would not say vice-president, but I would say business agent.

The Court: Business agents, all right.

[fol. 168]

Q Let me read to you Interrogatory 8 and the answer thereto. 8-A:

"State the following information with regard"—and there follows a list of names. I am only taking the name Ralph Mandrew.

"Date of initiation into defendant."

The answer is "December, 1957."

"Period of service in shop delegate's council."

The answer to that is "None."

"C. Period of service in the assembly and district represented."

The answer to C is June 26, 1963 to present. District 5."

"D. Period of service on executive board."

The answer to D is "None."

"E. Period of service as paid officer, title of each paid office held and period for which office was held."

The answer to E is, "Business agent, June 26, 1963, to present."

"F. Whether said person was appointed or elected to each of said paid offices."

The answer to F is "Appointed business agent, [fol. 169] and then elected business agent."

Q Did you have anything to do with appointing Mr. Mandrew as business agent? A I did.

Q What did you have to do with appointing him? A Mr. Mandrew was in the same position as Mr. Pavlista. Both of them came out of a training class. They were two of our brightest people and when the need arose in the case of Mr. Pavlista and again in the case of Mr. Mandrew, we went before the assembly and we recommended that Mr. Mandrew be appointed as a business agent.

Q Prior to recommending Mr. Mandrew's appointment, did you consider whether or not he had had prior service in the assembly or on the executive board or in the shop delegate's council? A No.

* * * * *

[fol. 185]

Q Mr. Marley, was this change proposed by the president of the international from "term" to "year" approved by the assembly of Local 6? A It was.

Q What year? A I don't know the meeting but I [fol. 186] am sure it's in the minutes.

Q I hand you Exhibit 13 and Exhibit 13B and ask you if they help your memory in any way.

The Court: Why don't we stop. Mr. Marley, can you find the minute in question? Do we have the minutes here?

Mr. Lurie: If you give me one minute, we will find what he needs.

The Court: Is it supposed to be in the papers that were shown to the witness?

Mr. Kushner: I believe so, your Honor, that's the meeting of October 15, 1963.

The Court: You can look at those documents Mr. Marley, or your counsel can give you any other documents you may need.

A I don't see it here.

The Court: Shouldn't we stop, Mr. Kushner, and find it?

Mr. Kushner: All right, your Honor.

The Court: Do you have any objection if Mr. Lurie tries to find it?

Mr. Kushner: No, sir. As long as he hands it to Mr. Marley, of course.

The Court: Mr. Lurie, do you want to find the minutes [fol. 187] and show them to the witness?

Mr. Lurie: I do, your Honor.

The Court: Allright. Take your time.

Mr. Kushner: Your Honor, while this is being done, may I have some documents marked for identification?

The Court: Oh, yes, just hand them to the clerk.

Mr. Kushner: These are five documents.

(Plaintiff's Exhibits 50 through 54 marked for identification.)

A Yes, I have it here.

The Court: All right. Wait just a minute. Mr. Clerk, you were marking some exhibits for identification?

The Clerk: Yes, your Honor, they have been marked.

The Court: The witness says now, Mr. Kushner, that he has a document to which I assume he was referring before he answered.

Q What exhibits are you referring to, Mr. Marley? A Exhibit 13, I believe. It reads, "Minutes of the all-day assembly meeting held October 15, 1963," and there [fol. 188] is a by-laws panel report which reads, "Secretary-treasurer Marley called the committee to the platform. He read a letter from the general president Miller with proposed changes. See attached. The assembly approved the recommendation of the by-laws committee."

Q Is the recommendation of the by-laws committee Exhibit 13-B? A Yes. These are the changes to include what the general president suggested.

Q Isn't it a fact that there is no mention in Exhibit 13-B of changing the word "term" to "year" in Article

4, Section 7? A This is a fact because the assembly was in possession of galley proofs from the printers and that change had been made already. These were original changes that had to be made for the final proof, if I remember correctly.

Q When did the assembly approve the changes appearing in the galley proofs? A I don't know. I believe it was at this meeting but I am not quite sure. But I do know that we did change it and I do know we had galley proofs and I do know that it was "a year" and the final [fol. 189] reading of the proofs showed that it was "a year," and it was some time later we found out, when it came back, that "year" had been taken out and "term" had been put in.

Q Do you know when? Excuse me, did you finish your answer? A Yes, I did.

Q Do you know when the bylaws were delivered from the printer? A No, I don't, but I could easily find that date for you.

Q Do you know when the errata sheet was delivered from the printer? A Yes, it was later. It was later than when the bylaws were delivered because the errata was not found for some time after.

Q Who noticed the item which led to the errata? A Truthfully, I don't know who noticed it.

Mr. Lurie: I am prepared to stipulate that 10,000 copies of these bylaws, as printed without the errata, were delivered to the union sometime in February or March of 1964 and that 10,000 copies of the errata were delivered to the union in April of 1964 by the printer.

[fol. 190]

Mr. Kushner: I will accept that statement, your Honor.

The Court: All right. You agree that that is the fact?

Mr. Kushner: Yes, sir.

The Court: All right.

Q Mr. Marley, is Exhibit 50 for identification an accurate list of the hotels in the various districts of Local 6 in the 1962 general election? A I believe this is an accurate list, yes, sir.

* * * *

Q Is Exhibit 5 for identification—I am referring to pages 4 and 5—an accurate list of the hotels in the districts of Local 6 in the general election of 1965? A Yes, sir.

Q Exhibit 51 for identification is a copy of the Hotel and Club Voice of Local 6 for April 1965, is it not? A It is.

* * * *

[fol. 193] * * * *

Q If you will refer to the election guide on pages 4 and 5 of Exhibit 51, which is the April 1965 Local 6 Hotel and Club Voice, can you tell me who drew up the geographical districts in that election guide? A The [fol. 194] geographical districts were drawn up by the assembly.

Q Can you tell me when the assembly drew them up? A I imagine long before the election. Their basic geographical district stayed intact in the union. There were changes perhaps of one hotel here or one hotel there because of the building of new hotels. But by and large, the geographical districts are much the same and most of the hotels have been in these districts shown here for many, many years.

Q Do you know how many hotels were changed from one geographic district in the 1962 election to another geographic district in the 1965 election?

Mr. Lurie: Objection, your Honor.

The Court: Sustained.

Q Who drew up the election districts in the election guide in Exhibit 51? A The election districts were prepared by Mr. Walter Smith. The election districts were drawn up by Mr. Walter Smith and submitted to the Election & Objections committee with a view to getting as equally a number as possible within each election district and they were then approved by the assembly.

[fol. 195]

Q Do you know when they were approved by the assembly?

Mr. Lurie: Objection.

The Court: Sustained.

Q Can you tell us when Exhibit 51 was sent to the members of Local 6?

Mr. Lurie: Objection.

The Court: Sustained.

Q Mr. Marley, if you refer to Exhibit 27, which are the minutes of the meetings of Election & Objections Committee prior to the May 1965 election, there are minutes for meeting of April 23, 1965, which list you as being present among other people together with Mr. Lurie. Do you recall that you were present at that meeting of April 23rd? A I am sure that I was present if this says so in the minutes. I don't recall the exact meeting.

Q Aside from the minutes, do you recall that you were present? A To my own knowledge, do I recall what happened at that meeting?

Q Yes, sir. A No, sir, I don't recall what happened [fol. 196] at that meeting. I will have to read the minutes and refresh my memory.

Q Read the minutes and tell me if they refresh your memory. A Yes. I was present.

Q At that meeting, is it correct that certain people were ruled ineligible to run? A That is correct.

Q. And the Election & Objections Committee so ruled them? A They did.

Q Was there any reason for you being present at that meeting? A Yes, there was a very good reason for me being present.

Q What was it? A Whatever is required by the Election & Objections Committee, I, as the secretary-treasurer, had to supply that. Now, if you are saying that I was present at that meeting to influence the Election & Objections Committee, you are quite wrong, sir.

Q Well, you are putting words in my mouth, Mr. Marley. A That's unfortunate.

The Court: No, no. Next question.

[fol. 197]

Q Mr. Marley, what did you expect that you would have to supply to the Election & Objections Committee at that meeting? A Whatever they would require that was in the office at that time. Whatever they might require.

Q Did you discuss with any of the people who were ruled ineligible any of their complaints? A I don't believe so.

The Court: Didn't either Mr. Marley or Mr. Smith at some time answer that none of these people who were disqualified objected to the facts on which the disqualification was based? Am I correct?

Mr. Kushner: They honestly conceded the facts, yes, your Honor.

The Court: All right. I just want to be sure I remember the testimony.

Q Mr. Marley, is Exhibit 3 the set of Local 6 by-laws that were in effect in 1958? I will also hand you Exhibits 2 and 4. A Wait until I get it here, please. Yes, I believe these were in effect in 1958.

The Court: Referring to which exhibit, Mr. Marley?

The Witness: Exhibit 3, I believe it is.

[fol. 198]

The Court: Exhibit 3. All right.

Q Now, if you will turn to page 13 and page 14, Article 4, Section 6, they state that after 1954 there shall be an election in Local 6 in every even year, is that correct? A That is correct.

Q Was there an election in Local 6 in 1958?

* * * *

[fol. 200] * * *

Mr. Kushner: Your Honor, if Mr. Lurie will state that there was no election in Local 6 in 1958 for assembly or general office or for vice-president or for business agent, then I will withdraw the previous question.

The Court: All right. Is that the fact, Mr. Lurie?

Mr. Lurie: The election was held, I believe, in 1959, was it not, Mr. Marley?

[fol. 201]

The Court: Was there any election in 1958? That is the question.

Mr. Lurie: We will stipulate that there was no election in 1958, if your Honor please.

Mr. Kushner: I withdraw the question.

The Court: All right.

Mr. Kushner: I am at the end of my questioning of Mr. Marley, your Honor. However, I think this is as good a time as any to make a formal offer of this proof which includes in part questions to which objections were sustained to Mr. Marley.

The Court: All right.

Mr. Kushner: I prefer to make them out of the witness' hearing, if I may.

The Court: All right.

Mr. Clerk, will you take Mr. Marley to the witness room?

The Clerk: Yes, your Honor.

The Court: Mr. Marley, we will excuse you for a few minutes.

(Witness excused.)

The Court: Mr. Kushner, is it your contention that this proof, as to which you are going to make an offer, [fol. 202] is properly admissible under the pleading as they now stand?

Mr. Kushner: No, your Honor, not as the pleadings stand; in view of the order which was entered by Judge McLean.

The Court: So I take it that you want also to raise the point that I ought to reinstate those paragraphs?

Mr. Kushner: Yes, your Honor, but I am raising the point based on evidence which was not submitted to Judge McLean on which he didn't rule.

As you will recall, Judge McLean's ruling was a procedural one. It held that matters as to which the union had not had a fair opportunity or fair notice to correct could not be raised in a Title IV suit to set aside an election.

Now, we are offering to prove here that the officials of the Department of Labor apprised Local 6 officials and officials of the International Union of Local 6 of specific violations including, and I am limiting the offer to, two violations stricken by Judge McLean. One violation or alleged violation being that the executive board of Local 6 was appointed by the assembly but should, under Title

IV of the Labor Management Reporting & Disclosure Act, [fol. 203] have been elected by the members of Local 6 because members of the executive board were officers of the union within the meaning of Section 3(n) of the Act.

In that connection, I am prepared to put Mr. Fred Heitmann on the stand, who was the compliance officer who conducted the investigation in this case, and he would testify that on September 16, 1965, he had a meeting with Mr. Lurie and with Mr. Marley and at that meeting he raised, as possible violations of Title IV of the Act, the facts that the executive board was appointed by the assembly rather than being elected by the membership, and this violation or possible violation was fully discussed at that meeting.

Mr. Heitmann will also be prepared to testify that at the meeting of September 16th, with Mr. Lurie and Mr. Marley, they discussed as a possible violation of the Act the fact that timely notice of the composition of the districts in Local 6 was not given to the membership of Local 6 before the 1965 election.

I am also prepared to put on the stand Mr. Henry Queen. Mr. Queen is stationed in Washington and he is in the section of the Department of Labor which deals with these violations. He will be prepared to testify that on [fol. 204] November 8, 1965, a letter was sent to Mr. Edward S. Miller, general president, Hotel and Restaurant Employees and Bartenders International Union, copy of that letter going to Local 6, and that that letter apprised the International and Local 6 of the alleged violations of the appointment of the executive board rather than the election of the executive board and of the failure to give timely notice to the membership of the composition of the districts prior to the 1965 election.

Mr. Queen would further describe a meeting held in December 1965 with Mr. Lurie, with Mr. Cohn, Mr. Luria's colleague, with Mr. Katz, representing the International, with Assistant Secretary of Labor Reynolds, and Mr. Frank Kleiler also being present, at which time all possible violations were fully discussed including the two violations I have mentioned, the failure to elect the executive board and failure to give timely notice.

Mr. Queen would also identify a copy of the letter of November 8, 1965, which I described just previously, to the president of the International, and Mr. Queen would also identify a copy of a letter dated January 12, 1966, addressed to Sidney E. Cohn, Esq., Cohn & Glickstein, [fol. 205] with copy to Jonas B. Katz, Brown & Getler, representatives or attorneys for the International, which letter also fully set forth notice of the violations I have mentioned, namely, the executive board appointment violation and the failure to give timely notice violation.

As to the merits of these alleged violations, the evidence as to the executive board is already in the record so far as plaintiff is concerned. Your Honor has the by-laws before him, he has Mr. Marley's testimony as to the nature of the executive board. Plaintiff would offer no further evidence on that.

As to the alleged violation of failure to give timely notice, plaintiff contends that the facts in that regard are or would be undisputed, and the testimony would be elicited from Mr. Marley that Exhibit 51, which is the Hotel and Club Voice of Local 6 for April 1965, was sent to the membership of Local 6 at some time either in April or in May of 1965, I am not sure which, but, in any event, a very short period prior to the election of May 19th, and that this Exhibit 51, the Hotel and Club Voice, was the only election guide which was circulated to the members.

[fol. 206]

On the other hand, Mr. Marley would testify, I believe, that individual notices were placed in each hotel within Local 6's jurisdiction and that each such notice stated in which district that particular hotel was in, so that a member wishing to campaign in the general election of Local 6 prior to receiving this election guide, Exhibit 51, would have had to go from hotel to hotel and take off the district from each notice in each hotel.

That is the extent of my offer, your Honor.

The Court: Mr. Kushner, I take it your offer doesn't include any complaint by any member of the union to the union of any of these additional matters?

Mr. Kushner: No, your Honor, we are not contending that this was raised by any member of the union in a written complaint to the union or the International.

* * * *

Have you made your offer of proof?

[fol. 210]

Mr. Kushner: I have, your Honor.

The Court: All right. I see your point and at this moment I decline to permit the additional issues here to be tried. I will give the matter further thought and if overnight I should change my mind, I will let counsel know.

* * * *

Mr. Kushner: Your Honor, may I mark for identification the two letters I have referred to in my offer and formally offer them in evidence?

The Court: Yes.

(Plaintiff's Exhibits 55 and 56 marked for identification.)

The Court: They are marked for identification in connection with the secretary's offer of proof.

Mr. Kushner: Yes, your Honor.

Mr. Cohn: May we have copies of that, please?

Mr. Kushner: Yes. I offer Plaintiff's Exhibits 55 and 56 for identification in evidence in connection with the offer of proof that has been made.

The Court: My ruling is that these additional mat-

[fol. 214] ters are not to be here inquired into. If I, after reflection, change my mind, I will notify counsel.

Are you finished with Mr. Marley, Mr. Kushner?

Mr. Kushner: Yes, your Honor.

The Court: Mr. Clerk, would you ask the witness to return, please?

JAMES MARLEY resumed.

The Court: Mr. Lurie.

Cross-examination by Mr. Lurie:

Q Mr. Marley, were you a member of the shop delegates council before you became an officer or paid officer of the union? A. Yes, sir, I was.

Q Were you as a member of the shop delegates council given any identification or proof of such membership? A I was.

Q What was that? A This was a card stating that I was a member of the shop delegates council, with the name typed in and bearing the signature of the president [fol. 215] and the secretary-treasurer.

Q Were all members of the shop delegates council given such a card? A They were.

Q How long have you been the president of the union? A Since June of 1965.

Q Are you the most highly paid official of the union? A Yes, sir.

Q What is your salary? A It is $225, with an allowance, maximum allowance of $45 expenses.

Mr. Cohn: That is per week?

The Witness: Per week.

Q Mr. Marley, will you tell the court the various activities engaged in by a member of the assembly of the union? A First of all, he has his function as a memmer of the assembly in the meetings called for in the by-laws and in addition whatever other meetings there may be. However, members of the assembly are involved in a great many activities in the union. All of the members of the executive board that meet monthly, are mem- [fol. 216] bers of the assembly. So you have members of the assembly serving in the executive board. The various department committees, housekeeping, bar, banquet, kitchen, club, and so forth, all of these people on these committees are members of the assembly. The board of trustees that checks—

Q What do these committees do, Mr. Marley? A First of all, the executive board meets monthly and takes up all of the business that has transpired from the last month and between the meetings of the assembly. I am now talking of the meetings that they attend, because assembly members are involved in meetings practically the whole year around in the various departments.

Department committees deal with special problems having to do with that particular department or trade. The housekeeping department would meet to discuss problems affecting the housekeeping department within the city and bring this to the attention of the assembly or advise the union because they are employed in that department.

The board of trustees, also assembly members, meet monthly. This board of trustees is charged with going [fol. 217] over the books monthly and seeing that the accounts are in order and looking to the general financial welfare of the union. In addition to this, you have a grievance board, which is a trial board, where members who are aggrieved may come before this board and this board has hearings and meets monthly and also these members of this board come from the assembly.

In addition to this, the assembly members spearhead drives that involve national legislation, state legislation. It is out of this assembly that the tipping workers of the United States are now covered by social security for the first time.

You must bear in mind, sir, that this is not a national union or international union; this it a local union. However, the members of this assembly, I say to you, are directly responsible for the fact that tipping workers in the United States are now covered by social security.

Q You mean for their tips? A Yes, for their tips.

If you want to go into the workings of the assembly and some of the other things, the garnishee bill in New York State is directly the result of our members of the [fol. 218] assembly, Local 6 assembly.

Q What did the members of the Local 6 assembly do in connection with these various activities? A These discussions came up at the assembly and at meetings of assembly members and they spearheaded a drive that involved the membership of Local 6, and going to Washington—

Q Did the members of the assembly or some of them go to Washington? A Yes, quite a lot of them went to Washington.

Q And Albany? A And Albany, where we were successful in getting through a garnishee bill. This came out of our social services in the union, through the assembly.

Then you have the latest one that we have, after a fight of 25 years, again spearheaded by the assembly, and naturally bringing in a lot of the other members, and that is the so-called Sloane House Bill, which is legislation for non-profit organizations covered by the board.

[fol. 219]

The assembly is not a group that just meets four times a year and goes away and forgets about it. They are engaged in practically all the activities of the union.

The Court: Mr. Marley, say from the first of January, 1965, to date, roughly how many members have there been of the administrative board?

The Witness: There are the four general officers, seven vice-presidents, and the delegate to the New York Hotel Trades Council.

The Court: Is there just one delegate to the trade council?

The Witness: Yes—no, there are more delegates to the Hotel Trades Council. The president of the Hotel Trades Council would be a member of the administrative board, provided he is a member of Local 6.

The Court: As I read it, the administrative board are the general officers, the vice-presidents and the union's delegates to the trades council?

The Witness: Yes.

The Court: You say there are four general officers, [fol. 220] seven vice-presidents?

The Witness: Yes.

The Court: And how many delegates to the trades council, during this last, say, two years?

The Witness: Seven delegates, I believe.

Q But they are, are they not, in most instances—

A They are already members of the administrative board.

Q By virtue of their other positions.

The Court: Then the membership of the administrative board is roughly 11 or 12?

The Witness: That's right.

The Court: Now, take the executive board; how many members has it had, say, for the last two years?

The Witness: Around—I will have to check my figures on it—around 60 or 64—between 60 and 65.

The Court: 60 to 65?

The Witness: That's right.

The Court: Now, the assembly, how many members in the last two years?

[fol. 221]

The Witness: Approaching 400. Between 350 and 400. This, your Honor, is based on the one for 500 for the executive board and one for 75 for the assembly.

The Court: All right.

By Mr. Lurie:

Q Are there other meetings which assembly members attend by virtue of his membership in the assembly? A Yes. There would be meetings in the district council which he would attend.

Q Is he by virtue of the by-laws— A A member of the district council, along with the delegates.

Q And what happens there? A There the problems of the district are discussed and there the officers of the district appear before all of the members of that particular district and an opportunity is given for members in that particular district to know what is happening in each hotel and whether the hotel is being well handed. It is a place where the members of the district—the delegates and the assembly members in the district is—it is a place [fol. 222] where they have a forum for discussion of their problems within that particular district.

Q When negotiations take place on an industry-wide scale, do the assembly members in any respect participate in those negotiations? A Yes, they do. The negotiating committee is made up of the executive board of Local 6 and all of the department committees of Local 6, and this is Local 6's group that sits in with the negotiating committee of the New York Hotel Trades Council, or the wage policy committee.

Q These people are all members of the assembly? A These people are all members of the assembly.

The Court: But, Mr. Marley, now be patient, because I don't know too much about collective bargaining, but when the employer or employers sit down with the union, let's say across the table, how many members of the union or how many persons representing the union face the other side of the table?

The Witness: This would depend, your Honor, on the circumstances. There are times when there would be [fol. 223] 200 to 250 members where the points would be discussed between the hotel association and the union, if it goes to the three-man commission. There are other times where the meeting—

The Court: I can't visualize 200 or 300 people representing the union sitting down and negotiating with the employer.

The Witness: No, sir. In the final analysis it has to wind up with a smaller group.

The Court: Well, how many in that smaller group?

The Witness: Oh, I would say about 15.

The Court: 15?

The Witness: Yes.

The Court: So that I visualize about 15 representatives of the union talking across the table to representatives of the employers?

The Witness: Yes, sir.

The Court: Now, those 15, of course, have to consult with larger groups of the union, but they do that in their meetings and caucuses, out of the presence of the employer?

The Witness: Yes, sir. They would have to report back to the wage policy committee of which this group [fol. 224] of local 6 members from the assembly is the largest group.

However, may I with your permission, your Honor, clarify the question of 200 or 300 people sitting down?

The Court: Oh, yes.

The Witness: There is in the contract if no agreement is reached by a certain date between the parties, then the matter will be submitted to a three-man commission, an impartial arbitrator in the middle, and one from the union and one from the association, and when it goes to

this extent, when the whole wage policy committee is involved in this and testimony is taken and the assembly members testify as to conditions in the hotel in order, very frankly, to try to get the commission to give a majority decision on our side. That is when the large meetings take place. These don't always take place because it is possible the parties may reach an agreement without going to the commission, but very often we have to go to the commission.

The Court: But you mean when the commission meets 200 or 300 persons from the union may attend the [fol. 225] session?

The Witness: And place their case before the commission, yes, your Honor.

The Court: All right.

Q Mr. Marley, when the demands of the employees are going to be formulated, to be placed before the employers, what group formulates those demands? A For Local 6, the assembly formulates the demands.

Q Once it goes from the assembly to the New York Hotel Trades Council, what group in the Hotel Trades council formulates those demands? A The overall wage policy committee.

Q Are members of the assembly of Local 6 participants in that wage policy committee? A Yes, they are, to the extent of the full executive board and the six committees—I imagine it would be somewhere around 110, 120 assembly members.

Q All of this work that assembly members do is not paid, is that right? A That is correct, with the exception that if they lose a meal, because most of these people [fol. 226] work in hotels where they get a meal, and if we have to take them off the job they lose the meal and therefore they make an arrangement to allow them $5 meal money. Outside of that, there is no payment. It usually costs a member of the assembly money to serve.

Q Assembly meetings are held, except in the case of all-day sessions, in the evening, is that right? A They are held in the evening, although we have experimented—now they are held in the evening at 5 o'clock. We have experimented with different times because of the type

of industry it is, a 24-hour industry, and if you call a meeting at 3 in the afternoon you will be able to get your dining room department delegates, to a great extent, to attend that meeting, but when you call it at 5 it becomes difficult for certain dining room members to attend that assembly. We have experimented with 3, with 6 and we are now on 5.

Q So that the lack of attendance at a meeting by an assembly member doesn't mean that he doesn't attend many of the other meetings which you have discussed? [fol. 227] A Of course not.

Q And it doesn't mean that he is not participating at great cost to himself in union affairs? A It does cost him quite a lot to attend meetings and union affairs.

The Court: Where does the assembly meet?

The Witness: In the headquarters of Local 6, your Honor.

The Court: You have a room big enough to hold—

The Witness: Your Honor, we bought a building 12 years ago, with a 20-year mortgage, and if I sound egotistical, I hope you will forgive me: I was the secretary-treasurer of the union. At that time the union general fund was $50,000 in the red and today the mortgage has been burned, after ten years, and the union has a net worth of $2 million.

The Court: But you have a place—

The Witness: We have a beautiful auditorium—

The Court: That will hold 500 people?

[fol. 228]

The Witness: Yes, sir.

By Mr. Lurie:

Q Mr. Marley, you mentioned before on direct examination that Mr. Mandrew and Mr. Pavlista came out of a class that was run by the union, is that right? A I did, sir.

Q Was that class initially open to all—

Mr. Kuhner: Your Honor, at this time I object to leading questions. I have been tolerant up to now but I think we are coming to a more important part.

The Court: Finish your question, Mr. Lurie.

Mr. Lurie: I will withdraw it and start again, your Honor.

Q Will you tell the court how that class was organized, who was permitted in the class, who selected the people that continued in the class, on what basis the class operated, what, if you know, was taught in the class, what the students did—in short, the entire history of this class out of which Mr. Mandrew and Mr. Pavlista were eventually appointed business agents of the union. [fol. 229] A I am going to do this to the best of my recollection. To the best of my recollection, this class was open to all members of the union who wished to make application for this training class, and I believe that around more than a hundred applicants' applications were received—probably around 120. We knew it was not feasible to run a class of 120 people.

We had a professor from Cornell, I believe it was Professor Cook, who assisted us in this and of the original 119 there was, I believe, three sessions—three or four sessions, where the 119 was reduced, on the advice of the professor. I suppose it was a sort of examination class to see who would be able to continue.

To the extent it was reduced, I don't know, but I do know that after the class was reduced, on the advice of the professor, and other teachers who helped us, then the main class continued. The people who did not qualify for that class, however, were able to go into other classes that the professor felt they could handle, but the main class, I suppose is what you are interested in, and as I said to you, Professor Cook conducted these classes and she [fol. 230] brought in experts from outside on the various phases that they were teaching. The classes, as I understand it, dealt with labor history, dealt with finances, dealt with collective bargaining, and I don't know the full curriculum, but it dealt with a host of items that would be necessary—oh, labor law—that would be necessary for a young man or young woman or, for that matter, a man or woman of any age, a young member, who was interested in serving their union either as an assembly member or as an officer. This is the type of class that was run.

Q How long did that class continue? A I don't know. I think the initial class would be probably, and this again is an educated guess—probably extended over months of a year, with the summer also. I would imagine that the actual class itself was probably six to eight months.

Q The employees, did they attend full time—I withdraw that.

The members of the final class, did they attend that class on a full-time basis or a part-time basis? A I think originally it was a part-time basis. I believe that later there was some on a full-time basis, with on-the-job [fol. 231] training.

Q Would it refresh your memory if I said they attended two days a week full-time, initially? A Yes, that would be correct, I believe.

Q Then some of them went on a full-time basis, is that right? A Full time, yes.

Q Training? A Training.

Q Were Pavlista and Mandrew two of these people? A Yes. There were others who went on full-time training.

Q Did those two then eventually get appointed as business agents of the union? A Yes. The understanding, sir, at that time was that on the job training for full-time didn't necessarily mean that this would provide a job as business agent for them, and all of the applicants knew this at the time.

Q As a matter of fact, some of them were not appointed agents? A All of them took leave of absence and some of them were not appointed business agents and [fol. 232] went back to the shop.

Q Mr. Pavlista was first appointed in November of 1961, is that right? A That is correct.

Q There was an election subsequently held in 1962, is that right? A There was.

Q Mr. Pavlista was reappointed after that election, is that right? A That's right.

* * * *

[fol. 233] * * *

The Court: Do I understand that the man was first appointed business agent and then there was an election, he didn't run for election and afterwards he was re-appointed?

Mr. Lurie: That is correct, your Honor.

By Mr. Lurie:

Q Mr. Marley, what is the difference between a business agent who is elected and a business agent who is appointed under the by-laws, pursuant to the approval of the assembly? A You will have to let me look at the by-laws.

The Court: Couldn't you tell me if it is based on the by-laws, Mr. Lurie?

Mr. Lurie: No, it isn't. In a sense it is based on the by-laws, but I will rephrase my question.

Q What is the length of office or how long does a business agent who is appointed remain in office? A That [fol. 234] would depend entirely upon the assembly. The business agent who is elected is elected for a specific term. An appointed business agent is appointed by the assembly and they may appoint him to continue until the end of the term, provided they have approval from the assembly.

The Court: Did this man ever run for election as a business agent?

The Witness: Yes, he did, sir.

The Court: Was he elected?

The Witness: He was elected, yes, sir.

The Court: All right.

Q Section 9 of Article 3 of Exhibit 1—

The Court: What page?

Mr. Lurie: Starting on the bottom of page 7. That provides: "The number of business agents to be elected for each district from each department shall be determined by the assembly at a meeting of the assembly prior to the day of nominations for the election; (b) the assembly may upon recommendation of the administrative board from time to time appoint and remove such additional appointed temporary, part-time and full-time

[fol. 235] business agents as may be in the business interests of the union."

Q When Mr. Pavlista was appointed, was he appointed pursuant to Section 9(b) of Article 3 of the by-laws? A He would be appointed in accordance with the section of the by-laws in existence at that time, yes.

Q He would be— A Yes.

* * * *

[fol. 237] * * *

Q Where was the last general membership meeting of the union held? A I think it was Madison Square Garden.

Q Don't you know, Mr. Marley? A Yes. It was in Madison Square Garden.

Q Is there any other hall in New York City which is large enough to contain the membership of Local 6 at a membership meeting? A No, no, I don't think so.

Q The workers in the hotels work seven days a week around the clock, is that right? A That is correct.

Q Is it possible to find a time when a general membership meeting of the union can be held? A Only if you want to violate the contract and stop every hotel in the City.

Q And if you did that, you would have to call them to Madison Square Garden, is that right? A Yes, sir.

* * * *

[fol. 240] * * *

LUBOS PAVLISTA * * *

[fol. 241]

Direct Examination:

Q Mr. Pavlista, by whom are you employed? A I am employed by Local 6.

Q Are you a business agent for Local 6? A Yes, I am.

Q What district do you represent? A I do represent District 4.

Q Did you run for election as a business agent in the 1965 election? A I did.

Q Prior to the 1965 election, you were also a business agent of Local 6? A I was.

Q You were a business agent since November of 1961? A Yes, sir.

The Court: May I see Exhibit 51 a minute?

(Document handed to the Court.)

Q When did you first become a member of Local 6? A I was initiated in April 1952.

Q From April 1952 to sometime in 1956 did you work at a trade? A Yes, I was a waiter in the University [fol. 242] Club on Fifth Avenue and 54th Street.

Q Then you became a trainee business agent? A No, sir, I became a banquet waiter in the Commodore Hotel.

Q Then what happened? A In 1960 I read in the newspaper that there will be courses for business agent in Local 6. I believe it was late 1959, December, and I put application and I believe in late February I joined the classes which consisted approximately of 120 people, and after several meetings, courses, there were twelve people selected to continue in a course and I was among the twelve.

Q Who selected you? A There were several examiners in the meeting. To my recollection—

Q Who were they? A Well, understand, I was selected by the union. I don't know by whom.

Q You don't know by whom. All right. How long did the classes last? A The first one or the second one?

Q The first one. A The first one, I believe, three weeks.

[fol. 243]

Q Three weeks. A With 120 people.

Q What was the class in? A We were talking about the contract, the grievances, the union activities, about history of union movement, in United States, civil rights, and all pertinent questions which should interest union membership.

Q Who taught this first class? A There were several people. I believe Miss Alice Cook, Professor Cook, Mr. Alpert, Miss Seif. You are talking about the first—

Q Yes, the first class. Who taught the second class? A The second class was conducted mainly by Mr. Alpert, by Miss Seif and several officers of the union.

Q Was Professor Cook a teacher of the second class? A She visited the class, to my knowledge, several times and she had some courses but I can't recollect exactly how many times she was there; but she was there from time to time.

Q How long did the second class last? A The first [fol. 244] term was up to the June break and then it started again after the summer. And it finished around December.

Q So how many months would that be? A I would say about seven, eight months.

Q Were you interviewed by anyone prior to being selected for the second class? A No, sir.

Q No one interviewed you? A Well, people who were conducting the class were asking questions and making tests, if you call this "interview."

Q Were they asking questions in class or they interviewed you privately? A In class.

Q But no one interviewed you privately before you were selected for the second class? A No, sir.

Q Incidentally, before you attended these classes, were you a department delegate? A Yes, sir, in the University Club I was on the negotiating committee in 1953 and I was a delegate of the banquet department in the Commodore Hotel from 1950, I believe.

[fol. 245]

Q How long were you a department delegate? A Off and on, I would say six years.

Q As a department delegate, what did you so? A Well, the banquet department, Commodore Hotel, consisted of about 120 waiters and 15 captains, and I represented them with the management, and delegate—well, I say in the banquet department the delegate has special duties because we are paid by functions and I had to see that every function is properly paid by the management. The duties of the delegates are numerous and—but mainly I think we see that the contract is upheld.

Q Would you say that you acquired a broad knowledge of union activities while you were a department delegate? A Well, I would say first they require common sense and feeling for the worker and, of course, you have to study the contract to know how much money you should get.

Q Does it require anything else? A I think common sense is the most important thing.

Q Can you say whether your experience as a department delegate helped you in any way in your future [fol. 246] occupation as a business agent? A Certainly, it did.

Q To a great extent? A To the practical extent which helped me in the shop, in the particular department.

Q What extent is that? A Well, I knew—mostly 99 per cent of my knowledge was about the banquet department. It is true that I didn't know as much about the other departments because I was mostly involved with the banquet department or the dining room department in the University Club.

Mr. Kushner: May I have this marked for identification, please.

(Plaintiff's Exhibit 57 marked for identification.)

Q Does your signature appear on Plaintiff's Exhibit 57 for identification? A It does.

Q This letter, which is Plaintiff's Exhibit 57 for identification, is dated April 5, 1962?

* * * *

[fol. 247] * * *

Q Mr. Pavlista, this letter, which is Exhibit 57, mentions a special administration caucus of dining room members of District 4 on April 11, 1962. Was such a caucus [fol. 248] held? A It was.

Q To whom was this letter, which is Exhibit 57, sent?

* * * *

[fol. 255] * * *

Mr. Lurie: It's never been our contention, if your Honor please, that these by-laws are defended by the fact that opposition people, people who will not support the

administration ticket, can run on the administration ticket, and I don't think Mr. Kushner thinks we are claiming that.

* * * *

[fol. 260] * * *

A I don't think, to my recollection, that the letter was sent; I think the letter was given.

Q Given by hand? A That's correct.

Q To whom was it given by hand? A To many leading members in the dining room department.

Q Was it given to various department delegates? A Among others.

Q Was it given to assembly delegates? A Among others.

Q Who were the others? A As I said, other leading members, outspoken people, from the department.

Q Do you know to how many people this letter was given? A I do not recollect how many.

Q Did you give it? A I might give some. I might [fol. 261] have

The Court: Were you a business agent at this time? This is 1962.

The Witness: I was an appointed business agent.

The Court: Before this letter?

The Witness: Yes, sir.

Mr. Kushner: April 5, 1962.

The Witness: I was appointed business agent.

The Court: At that time you were an appointed business agent?

The Witness: That's correct, your Honor.

Q Let's go briefly aside for a moment and deal with aspects of the last question asked you. Look at the signatures on this letter, Exhibit 57. Who was Betty Smith, as of April 5, 1962? A Betty Smith was the vice-president for—

Q Who was Helen Lawless? A Helen Lawless was an appointed business agent.

Q Who was Dave Hooko? A He was an appointed business agent. Both of them were with me in the classes.

[fol. 262]

Q. Were they appointed business agents in district 4? A Yes, sir

Q Who was Lubos Pavlista—you have already said that—you were appointed business agent in district 4? A Yes, sir.

Q Arcadio Arcos? A Business agent in District 4.

Q Vito Pitta? A Business agent.

Q In District 4? A I don't believe he was in District 4. I don't recollect.

Q He was in another district? A I believe so.

Q So that all the signers of this letter were paid officers of Local 6 when this letter was signed? A Yes, sir.

Q Did you meet with your fellow signers of the letter before it was drawn up? A I might have.

Q Did you decide who would deliver the letter and [fol. 263] to whom? A No, sir, I don't believe we decided that. I cannot recollect if we decided who—I cannot recollect who decided to whom to deliver the letter, sir, or to which people. I do not recollect that.

Q Do you recollect that someone decided to whom to deliver the letters? A It was decided. I don't know who decided it, but it was decided that the letters will be given to leading members of the department in the district.

Q Did someone draw up a list of such leading members? A I do not recollect.

Q Do you recall how many such leading members there were? A I would say between 60 and 100, as to my recollection.

Q Was this being held on April 11? A The meeting was held, yes.

Q How many people attended the meeting? A To my recollection, probably between 30 and 40, or something like that.

[fol. 264]

Q Prior to this meeting of April 11 did you deliver a copy of this letter which is Exhibit 57 to Charles Salvaria? A It is very possible. I can say yes.

Q Mr. Salvaria at that time was a shop chairman, was he? A I don't know if he was at that time shop chair-

man, but I know that at that time he was a delegate in the Columns Room in the Savoy Plaza. He might be a shop chairman after this date.

Q Prior to this meeting of April 11, do you recall meeting Charles Salvaria and telling him that he would be nominated for assembly at the administration caucus on April 11? A I remember I was talking with Charlie Salvaria about a possibility if he would like to run for the assembly, that the members were talking about him.

Q Do you recall what else you said to Salvaria on that occasion? A I do not.

Q Did he tell you he would run? A I cannot say, but apparently he did, because he did run.

[fol. 265]

Q Did he discuss with you the possibility of putting up other people than himself for assembly? A I do not recollect.

Q Was Salvaria nominated at that caucus meeting on April 11? A He was.

Q Prior to this April 11 meeting did you discuss with anyone else the possibility of his or her running for the assembly? A I did, yes.

Q With whom, if you recall names? A About maybe 40, 50 people.

Q Who made the decision to talk to these 40 or 50 people? A Well, nobody made a decision. We were talking with all these people and we told them that a caucus will decide who is going to run on the A slate.

Q Who is "we," by the way? You said "We told them." Did you mean yourself or someone plus yourself? A Like Salvaria and myself—people who were active in the district, in the department.

Q When you asked these people about the possibility [fol. 266] of running, did you consider which crafts they came from? A Well, we had several caucuses, each caucus for a different craft. We didn't discuss if he is going to run; we were inviting these people to a caucus and they were told what the caucus is and the caucus will decide who is going to run on A slate.

Q At the caucus you didn't speak up and suggest that certain people ought to run? A I did not.

Q You did not? A I did not.

Q Not at all. At this caucus of April 11 was there any discussion concerning running business agents and the vice-president for the district? A Yes, sir.

Q Who spoke in that regard? A Many members, many members.

Q Did you speak? A I did not.

Q At this caucus were there business agents and a [fol. 267] vice-president nominated? A Yes.

Q Who? A I believe Miss Betty Smith was nominated for vice-president, to run on the A slate. Mr. Pitta, Mr. Hooko and Mr. Arcos.

Mr. Lurie: Now, if your Honor please, the question was nominated. What we are talking about is proposed for nomination by the A slate, to be absolutely clear. These were not nominating meetings of the union.

The Court: Well, I guess that it what Mr. Kushner meant.

Had you finished your answer?

The Witness: Yes, sir.

The Court: All right, next question.

Q Was a decision made at this meeting to nominate the people you just named for the positions you just named? A These people were nominated to be nominated on the official nomination meeting of the union.

Q All right. On the administration party slate? A A slate, yes, sir.

[fol. 268]

Q At this meeting of April 11, did anyone propose to nominate other than Betty Smith for vice-president? A I don't think so. I do not recollect that.

Q Did anyone propose to nominate anyone other than Arcadio Arcos for business agent? A I do not recollect.

* * * *

Q Mr. Pavlista, you don't recall that anyone put up [fol. 269] any other possible nominees in opposition to Miss Lawless or Mr. Arcos or Mr. Hooko?

Mr. Lurie: I submit there is no testimony that Miss Lawless was nominated.

Mr. Kushner: She was nominated to be nominated, in Mr. Pavlista's phrase.

The Court: The objection is overruled. Read the question.

(Question read.)

The Court: Can you answer the question?

A Yes, I did—I never stated Miss Lawless was suggested. My testimony was for some previous question before, that Betty Smith was suggested for vice-president and Hooko, Pitta and Arcos for business agent.

The Court: Did anybody suggest anybody else for business agent other than those three, Hooko, Arcos and Pitta?

The Witness: Not to my knowledge, sir. It is not my recollection.

The Court: All right.

Q This was an administration caucus of the dining room members of District 4? A Yes, sir.

[fol. 270]

Q Did you go into that meeting with the knowledge of how many assembly members in District 4 the dining room department could nominate in the 1962 election? A I do not recollect, sir.

Q You had no set number of people who could stand from the dining room department? A I do not recollect that at that time I did have the knowledge. I did have the knowledge, I know, because I remember clearly it was stated on the nominating meeting, but I do not have a knowledge that I knew this at this time, sir.

Q Did you tell or did any of your colleagues tell the people present at this meeting how many people they could propose to nominate for assembly?

* * * *

[fol. 271] * * *

A I can't swear to that, sir.

Q You don't recall whether you or any of your colleagues told the people at this meeting how many people they could propose to nominate for assembly in the dining

room department in District 4? A I said I can't swear to that, sir.

Q You don't recall, is that it? A I do not recall.

Q Do you recall how many people were put up? A No, sir. I would have to refresh my memory.

Q Did you hold similar administration caucus meetings for other departments in District 4 prior to the 1962 election? A Yes, sir.

Q How many such caucuses did you hold, if you re- [fol. 272] call? A We call a caucus for each craft. I believe the bar and banquet would be altogether, because it is a smaller department—I believe four or five, sir.

Q At each of these caucuses what happened? A On each of the caucuses the candidates for the offices were excused and it was suggested that on the nominating meeting of the union certain names would be put up for the A slate.

Q For what positions on the A slate? A For all positions.

Q Within the district? A Within the district.

Q Do you recall if Mr. Salvaria spoke to you about putting up Gene Quara for assembly in District 4? A Yes, he did.

Mr. Lurie: May I have that question again?

The Court: Yes.

(Question read.)

Q What did you say regarding that? A I went to [fol. 273] talk—first of all I said that I would talk to him, and I did talk to him. I can even recollect the conversation with Mr. Quara.

Q What was that conversation? A We were talking about the union, about the assembly, and Mr. Quara didn't like that sometimes there is only one slate, there is no opposition, and he suggested that even in that time that half of the officers should run against the half of the other officers from the same slate, and I told Mr. Quara that I never heard about such a thing, that the caucus—I explained what the caucus is. I told him when you go to a caucus you are part of it and you agree to the decision of the caucus.

Mr. Quara told me that he wouldn't be part of it, and if the caucus agreed to something with which he disagreed, he would not be bound by it.

I told Mr. Salvaria that I don't believe Mr. Quara is interested in any caucus.

Q Did Mr. Quara suggest to you that the administration party should have primaries for positions on the administration party slate? A I do not recollect that.

[fol. 274]

Q Did Mr. Salvaria suggest that to you? A I do not recollect that.

Q Had anyone made that suggestion to you? A Not to me, sir. The suggestion which was made, and I stated, was that half of the officers should run against the other half of the officers.

Q Did you hold similar administration caucuses prior to the 1965 election? A Yes, sir.

Q Do you know if other administration caucuses were held in other districts in 1962? A I do, sir—in?

Q In 1962, prior to the 1962 election. A I believe so, yes, sir.

Q Were they also held in other district prior to the 1965 election? A Yes, sir.

Q Did anyone brief the various business agents and vice-presidents on how to hold these caucuses? A No, sir.

Q No one did? A No, sir.

Q These caucuses were held at the decisions of the [fol. 275] respective vice-presidents and business agents? A When I became business agent I knew that this was done every time before the elections. This was common knowledge.

Q That this was customary; is that what you are saying? A Yes, sir.

Mr. Kushner: No further questions.

The Court: Mr. Lurie.

Cross-examination by Mr. Lurie:

Q Mr. Pavlista, while you were attending your training school did you, as a trainee, attend meetings of the assembly? A Yes, sir.

Q And particiate in some assembly activities? A Yes, sir.

Q Prior to your being a business agent in 1961, did you attend meetings of administration caucuses? A I did.

Q Were there votes at these caucuses as to who should or should not be candidates? A Yes, sir.

[fol. 276]

Q Were there occasions when one or more candidates stood for an office and there had to be a vote to determine that question? A Yes, sir.

Q Were there other situations where nominations were made freely from the floor and more than enough candidates were nominated? A Yes, sir.

Q And on some occasions did people withdraw in favor of others? A Oh, many times.

Q Did anybody at any of these caucus meetings dictate who should or should not be the candidate?

Mr. Kushner: Objection, your Honor, leading question.

Mr. Lurie: Cross-examination, your Honor.

Mr. Kushner: This is a hostile witness, your Honor, and it is not cross-examination.

The Court: I will sustain the objection as to form.

Q Who decided who would or would not be the candi-
[fol. 277] dates nominated by the caucus? A The members of the caucus.

Q Were there occasions when the members of the caucus differed and had to vote? A Yes, many times.

* * * *

[fol. 278] * * *

PATRICIA MCGUIRE * * *

Direct Examination:

Q Mrs. McGuire, by whom are you employed? A I work for the office of labor management and welfare pension reports, in the United States Department of Labor.

Q Are you in the New York area office? A Yes, I am.

Q What position do you hold? A I am a compliance officer.

Q How long have you been a compliance officer? A [fol. 279] About two and a half years.

Q During the course of my preparations for this trial did I request you to draw up certain charts, Mrs. McGuire? A Yes, you did.

Q And you gave me assistance? A Yes, that's right.

Mr. Kushner: I would like to have a number of charts marked for identification.

(Plaintiff's Exhibits 58 through 63 marked for identification.)

Q Mrs. McGuire, did you prepare Exhibit 58 for identification? A Yes, I did.

Q This exhibit is entitled "Attendance at Local 6 assembly meetings, June 21, 1962 through April 6, 1965."

Can you tell the court how you prepared the exhibit for identification? A Yes. I used Exhibit 45, which was the record of attendance at assembly meetings, provided by Local 6, covering attendance from 1962 through 1965.

Q What did you do? A I counted up the number [fol. 280] of members who had full terms on the assembly during that period. I excluded assembly members whose terms were incomplete, whether by reason of resignation or death or whatever reason. For each member I counted up the number of meetings he had attended and I then computed an average of the number of meetings attended per member of the assembly. I counted up how many members of the assembly had attended less than half of the meetings. I also counted up how many members of the assembly had skipped two or more successive meetings. I also counted up the number who had attended no meetings and then I computed a percentage of the totals for each of these.

Mr. Kushner: I offer Exhibit 58 for identification in evidence.

Your Honor, I might comment that I gave Mr. Lurie copies of all these charts about one week ago.

Mr. Lurie: May I question?

The Court: Yes.

Voir Dire Examination of Mr. Lurie:

Q Mrs. McGuire, you did not, in computing this, have [fol. 281] and record or compute any facts as to any other meetings other than assembly meetings attended by assembly members, is that right? A That's correct.

Q So that this merely is an analysis of the one exhibit, 45, which is in evidence, is that right? A Yes.

Mr. Lurie: Under the circumstances, your Honor, no objection.

The Court: Without objection, it is received.

(Plaintiff's Exhibit 58 was received in evidence.)

By Mr. Kushner:

Q Did you prepare Exhibit 59 for identification? A Yes, I did.

Q And that exhibit is entitled "Assembly meetings, 1962 to 1965." How did you prepare it? A To prepare this I used the minutes of the assembly meetings from 1962 to 1965, which were provided by Local 6. That is Exhibits 5 through 19. These minutes, in most cases, [fol. 282] noted the starting time of the meeting and the closing time of the meeting, and I merely made a list showing the date of each meeting, the time when it started, the time when it ended. If no opening time was shown or no closing time, I just left the period blank and there is an asterisk on the chart to indicate that.

Mr. Kushner: I offer Exhibit 59 for identification in evidence.

Mr. Lurie: Without conceding the relevancy, as the document from which it is based is already in evidence, no objection.

The Court: Without objection, it will be received.

(Plaintiff's Exhibit 59 was received in evidence.)

Q Exhibit 60 for identification is entitled "Past service of administration candidates for assembly in 1965." How did you prepare that? A Well, I had records of the results of the assembly elections from 1951 onward, which had been provided by Local 6. I also had lists which had been prepared by Local 6 of persons who served

on the shop delegates council. I also had the Local 6 mem-
[fol. 283] bership roster as of September 30, 1964. I took the list of candidates for assembly on the administration slate in 1965 and I checked with these other records to see how much prior service each candidate had had and if he had served in all five previous assemblies, I noted that, and if he had served on four previous assemblies, I noted that, and so on. I also noted the number who had served, according to my records, using these lists which had been provided by the union, the number who had served in the shop delegates council. Then I counted up the number who had never had any prior service and I computed some percentages showing prior service, and that is the chart.

Mr. Kushner: I offer Exhibit 60 for identification in evidence.

Mr. Lurie: With the same observation, no objection.

The Court: All right, without objection, it will be received.

(Plaintiff's Exhibit 60 was received in evidence.)

* * * *

[fol. 284] * * *

Q Mrs. McGuire, did you prepare Exhibit 61 for identification? A Yes, I did.

Q How did you prepare that?

Mr. Lurie: Which one is that?

Mr. Kushner: That is the list entitled "New Eligibles Created in Assembly."

Mr. Lurie: Fine, thank you.

A To prepare this, I used the election records which had been made available by Local 6. For the 1951 election and the 1954 election, I used newspaper reports of the results of the elections for those years. In 1956 I used a newspaper which listed all the candidates for office. I spoke to President Marley about this and he told me that all candidates on Line A had been elected in that year.

For the elections in 1959 and 1962, I used the reports of the Election & Ojections Committee. My procedure was—I started in 1951, and I took the newspaper list

[fol. 285] of the results and I compared all the names on that list with the membership roster as of September 30, 1964. If the persons on the list were still members, I counted them as new eligibles created in 1951. In 1954 I took the list from the newspaper, I compared it with the membership roster. If the person was still a member of the union, I then checked to make sure that he was not a duplicate of someone who had already been elected in 1951; and if he wasn't a duplicate, I counted him as a new eligible created in 1954.

Q You followed a similar procedure for 1956 and 1959 and 1962? A Yes, that's right.

Mr. Kushner: I offer Exhibit 61 for identification in evidence.

Voir Dire by Mr. Lurie:

Q Mrs. McGuire, the number elected in 1951 was 256, is that right? A That's right.

Q And you eliminated 101 people by virtue of the fact that they appeared on the shop delegates council list? A No—

[fol. 286]

Mr. Kushner: Excuse me. May I give the witness a copy of the exhibit?

The Court: Of course.

A (Continuing) This list includes anyone who might have served in the shop delegates council but who also served in the assembly.

Q How did you get, then, 155 rather than 256 in 1951, in view of the fact that that was the first assembly? A I excluded from the list all of those who were no longer in the union in 1954—'64.

Q So that your exhibit shows that from those who were elected to the assembly as of 1965, just prior to the election, there were 768 eligibles? A That's correct, as of September 30, 1964, that was the membership roster that I used.

Mr. Lurie: Thank you.

The Court: Any objection?

Mr. Lurie: No objection.
The Court: Without objection, it will be received.

(Plaintiff's Exhibit 61 for identification received in evidence.)

[fol. 287]

Direct Examination by Mr. Kushner: (Resumed)

Q Have you compared your figures on Exhibit 61 with the assembly figures of defendant on Exhibit 41 (handing)? A Yes, I have.

Q What did you find? A Well, the total shown on the exhibit prepared by the defendant is 531, I believe—

Q Please look at the last page. A 543 names of persons who became eligible through service on the assembly. There is a difference of 269 between my total and their total. When I compared the two lists I found 269 names on my list that were not on their list. I also found 30 or so names on their list which were not on my list. So there is a large discrepancy.

Q Are you able to state how many, if any, of the 269 names which appear on your list, Exhibit 61, but do not appear on Exhibit 41, appear on Defendant's Exhibit A? A Yes. There are 140 additional names that I found on this list that was presented later by the union—

[fol. 288] Q That is Exhibit A? A Exhibit A, that's correct. So that the discrepancy now is 129 names rather than 269.

Q The discrepancy between Exhibit A— A And my record, my chart.

The Court: Is it on Exhibit A that the total is 543?
The Witness: No.
Mr. Lurie: No, your Honor, that is the exhibit that the total is 1850.

Q Subsequent to preparing this Exhibit 61, did you go over department committees of Local 6 for certain years? A Yes.

Q For which years? A 1951, 1954 and 1956.

Q What were your results in that regard? A This is the executive board, right?

Q No, the department committees. A I found twenty-three additional names which should have been added to my chart.

Q Which is Exhibit 61? A Yes.

Q And these twenty-three names were names of persons who were members as of September 30, 1964 and [fol. 289] were not listed in Exhibit 61? A That is correct.

The Court: Well, what is a department committee? Have we had that before?

Mr. Kushner: Your Honor, Mr. Smith testified that for the years 1951, 1954 and 1956 he took the names of the department committeemen from the Election & Objections Committee reports, as well as the names of the executive board members, and put them on this list of 543, which is Exhibit 41 and which Mr. Smith prepared. We didn't take the names of department committeemen and we did take the assembly results for the years 1951, '54 and '56 from the union newspapers.

The significance of all this, your Honor, is that Mr. Marley points to a provision in the 1951 constitution of Local 6 which makes department committeemen members of the assembly by virtue of being department committeemen.

The Court: All right. Now I am caught up.

Q Did you prepare Exhibit 63 for identification? A Yes, I did.

Mr. Lurie: 62?

Q I am sorry. Let me go back and ask you if you [fol. 290] prepared Exhibit 62 for identification, which is entitled "New Eligibles Created Each Year in Shop Delegates Council," and in parenthesis "excluding those no longer in union and those who were later elected to assembly." A Yes, I prepared this.

Q Tell us how. A I used the two lists of shop delegates which was prepared by the union and it covered certain periods prior to 1948. I counted up—first I compared the names on the list with the 1964 membership roster and if they were still members, I added them to the list, provided that they were not duplicates of other shop delegates' people—in other words, that they had not

been elected in a prior year or in a prior month, for that matter, because sometimes these names appear three or four times on a page.

I didn't include in this list any shop delegate who was later elected to the assembly. He was counted among the assembly people rather than among the shop delegates people. Wherever there was a period that I did not have a list for, I left it blank and there is an asterisk to indicate that.

Q The two lists of shop delegates you are referring [fol. 291] to— A They are Exhibits 42 and 43.

Q 42 and 43? A That is correct.

Mr. Kushner: I offer Exhibit 62 for identification in evidence.

Voir Dire by Mr. Lurie:

Q This is an analysis of some sort or a compilation of the two lists the union gave you? A That's right.

Q And it doesn't take into account any question as to whether those lists are complete or incomplete? A I merely used the lists given me by the union.

Mr. Lurie: No objection.

The Court: Without objection, it will be received.

(Plaintiff's Exhibit 62 for identification received in evidence.)

Direct Examination by Mr. Kushner: (resumed)

Q Did you prepare Exhibit 63 for identification (handing)? A Yes, I did.

Q That list is entitled "Number of Eligibles Created [fol. 292] By Election to Executive Board in 1951, 1954 and 1956 (excluding those already on record as having served in the assembly or shop delegates council).

Tell us how you prepared that. A I took the names of those who had been elected to the executive board in those three years and I compared them with the list of persons I had already compiled showing membership on the assembly and another list which I had prepared showing membership on the shop delegates council, and I compared them with the membership record for 1964 and

any names that did not appear on the assembly record or the shop delegates' record but which were still members of the union, I counted as new names, and I came up with eight new names as a result of this.

Mr. Kushner: I offer Exhibit 63 for identification in evidence.

Mr. Lurie: Without objection, it will be received.

(Plaintiff's Exhibit 63 for identification received in evidence.)

Mr. Kushner: May I have this document marked for identification, please.

(Plaintiff's Exhibit 64 marked for identification.)

[fol. 293]

Q Mrs. McGuire, did you prepare Exhibit 64 for identification, which is entitled "Change in Districting Hotels from 1962 Election to 1965 Election of Local 6"? A Yes, I did.

Q How did you prepare it? A I used Exhibits 50 and 51, which are the election guides published in the Hotel Club Voice in 1962 and 1965, showing which districts which hotels were assigned to for purposes of voting in that election. I counted up the number of hotels, first of all, which were in the same geographic district for both elections but which were in different election districts of those geographic districts in 1965 than they were in 1962. I included among those hotels and clubs those which were in geographic districts which were split between 1962 and 1965. So they were not really changed from one election district to the other but in this 1965 election districts were split.

I also counted up the number of hotels whose geographic districts were different in 1965 and I included among these hotels new hotels which had come into existence between 1962 and 1965, since they had not had any geo-
[fol. 294] graphic district in a prior election. I excluded from the count any hotels which had gone out of existence after 1962.

Mr. Kushner: Your Honor, I am offering Exhibit 64 for identification, but solely in connection with the offer of proof I made this morning.

Mr. Lurie: I make the objection in connection with the objection that we made to the offer of proof.

The Court: I think I will sustain that objection for the time being.

Mr. Kushner: I have no further questions of Mrs. McGuire.

The Court: Any questions, Mr. Lurie?

Mr. Lurie: I think Mr. Cohn would like to question on this.

The Court: All right.

Cross-examination by Mr. Cohn:

Q What is your educational background? A I attended Radcliffe College and I graduated in 1961.

Q Mrs. McGuire, you specialized in— A In history.

Q And I gather you are a labor economist as well? A Yes. I am currently taking courses towards a Master's [fol. 295] degree in economics in the New School for Social Research.

Q You have never been a trade union official, have you? A Never.

Q You have been employed by the Government in the departments you told us about since you got out of school? A No, I have not.

Q How long have you been employed? A I have been employed with the Labor Department since the summer of 1963.

Q Have you ever worked in a trade union? A No, I have not.

Q Have you ever concerned yourself with the administrative affairs of a trade union? A No, I have not.

Q You have published no writings on the internal problems confronting a trade union in collective bargaining or administration of its internal affairs, have you? A I am sorry, I didn't get the beginning.

Q Have you ever published any articles on the internal affairs of a trade union or the administration of a [fol. 296] trade union? A No.

Q How many other unions have you examined into other than Local 6? A In what connection?

Q In connection with your official duties. A In connection with my present job, I have conducted innumerable investigations into many different unions.

Q Those were statistical investigations, just as you have testified to here? A Sometimes they were, sometimes they were not.

Q What other types of investigations have you conducted? A I have done financial investigations of the books and records of the union, I have conducted some other election investigations. I conducted a trusteeship investigation.

Q All for the Labor Department? A That's correct.

Q In Local 6 you came in and you were determined and instructed to do a completely objective statistical job, [fol. 297] were you not? A Of course.

Q You sought the cooperation of the union officials? A That's right.

Q Did you receive it? A Yes, I did.

Q Was anything kept from you that you asked for? A No. The union was very cooperative.

Q That goes for every official in the union from whom you requested information? A Any official I had any dealings with, that's correct.

* * * *

[fol. 305]

FRED V. HEITMANN * * *:

Direct Examination:

Q By whom are you employed? A The office of labor management, welfare pension reports, United States Department of Labor.

Q How long have you been employed by that agency? A Since shortly after the passage of the act, September 14, 1959.

Q What act are you referring to? A Labor Management Reporting & Disclosure Act.

Q What position do you now hold? A I am chief of the section of organization and investigations, branch

of general investigations. I am stationed in the Washington headquarters at Silver Springs, Maryland.

Q What position did you hold prior to that? A I was supervisory compliance officer assigned to the New York area office and I was in New York until August 15 of 1966.

Q During what period were you a supervisory com-
[fol. 306] pliance officer in the New York area? A From early 1963 until the time I parted from New York, with the exception of one year.

Q During this one year what did you do? A During that year I was director of a study conducted by a task force under the Secretary of Labor to examine manpower utilization on the Gulf Coast in the longshore industry.

Q What prior position did you hold prior to being supervisory compliance officer?

Mr. Cohn: We will concede his qualifications. They are eminent.

The Court.: Do you need any more?

Mr. Kushner: No. I am satisfied, your Honor.

Q What were your duties as a supervisory compliance officer? A During approximately the last 14 months I was in New York I was supervisor of all election investigations. I also handled one or two organized crime cases.

Q Did you have anything to do with the investigation of the 1965 election of Local 6? A Yes, I did.

* * * *

[fol. 328]

Cross-examination by Mr. Lurie:

Q Mr. Heitmann, in the course of your investigation everything you requested that was available at the time was given to you, was it not? A Yes.

Q And in the course of your investigation you verified the fact that the election had been by voting machines and that every conceivable safeguard that the union could place in to protect the right of the voter to vote was followed, did you not?

Mr. Kushner: Objection, your Honor. I don't see how that is relevant here. We are not charging any sort of ballot tampering or similar violation.

The Court: Well, I will take it. We have gone into a lot of background here. I will permit it.

Overruled.

A Insofar as such things as ballot tampering or anything like that is concerned, there was no evidence of anything of that nature.

The Court: Mr. Lurie, I agree it doesn't have anything to do with this case, but it interests me: If it is [fol. 329] possible to vote one slate by flicking down one lever doesn't that interfere with the secrecy of the ballot, because anybody standing outside who hears only one click will conclude that is a vote for the administration, whereas if they hear click, click, click, click, then it is not?

Mr. Lurie: The only thing I can say, your Honor, is whether you vote in a federal or state election you can pull one lever for an entire row of candidates. That is a usual practice.

The Court: It is?

Mr. Lurie: Yes. It is important, if your Honor please, that the Court be aware of the fact that this is an almost universal or customary practice in election where there are slates, that there be a single lever that can be pulled or a single spot that can be marked which would allow you to vote for the entire slate. It happens in every democratic and republican election. Also, you could have pulled the membership party lever and nobody would have known the difference.

The Court: You could do that with one click?

Mr. Lurie: Yes.

[fol. 330]

The Court: Except they didn't have a full slate.

Mr. Lurie: But you could have voted for all the candidates on their ticket.

The Court: Such as they were?

Mr. Lurie: Yes.

The Court: There is probably nothing to my point, but besides the secretary isn't making anything out of it here anyway.

* * * * *

Q As a matter of fact, Mr. Heitmann, you have ex-
[fol. 334] amined the records of many unions, have you not? A Yes.

Q The election records of many unions? A Yes.

Q Are you acquainted with the election records of the Amalgamated Clothing Workers and some of the locals in New York City? A No.

Q Would you be aware of the fact that for many years in most of those locals there has been no opposition ticket running against the administration? A I wouldn't be aware of it there but I am aware of it in many unions.

Q Would you say that the fact that there was no opposition ticket running in many unions is an indication of suppression or illegality? A Certainly not necessarily.

Q Have you had opportunity, Mr. Heitmann, to examine any of the election records of any of the local unions which are part of the same parent international, the Hotel and Restaurant Employees and Bartenders International Union in New York? A No.

[fol. 335]

Q Is it not true, as a matter of fact, Mr. Heitmann, that in the average trade union, without any evidence of corruption or restriction of any nature whatsoever and certainly without any question of illegality, the administration of those unions is returned to office time and again?

Mr. Kushner: Objection, your Honor. I think the question is so general that it can't possibly be answered.

The Court: I will permit it, for what it is worth. Can you answer it, Mr. Heitmann? Do you want to hear it read again?

The Witness: Yes, sir.

The Court: Read it, Mr. Reporter.

(Question read.)

A With some glaring exceptions, I would be inclined to agree that this is generally true.

Q And those glaring exceptions are exceptions of what nature? A I think of the electrical workers, where Mr. Carey was defeated, and the steel workers, where Mr. McDonald was defeated, but as a general thing, most do hold office for a considerable period of years.

* * * *

By Mr. Lurie:

Q Mr. Heitmann, is it not true that in many, many unions different groups run slates for office? A Yes.

Q And in the case of voting machines, is it not true that in almost all of those instances they have single levers for the slate? A Yes.

Q In this case, any individual who wished to vote for an individual on the membership party ticket, as opposed to an individual on the A ticket, could do so; isn't that right? A Yes.

Q And if he wished to vote for just a handful on [fol. 338] one ticket or a handful on the other, he could do so, isn't that right? A You mean he could split his vote?

Q Yes. A Yes.

Q He had absolute free choice? A Yes.

Q If he wanted to pull a lever, he could do so, but apart from that his choice was complete and free if he had the intelligence to do what he wanted to do? A Yes.

The Court: I think what you wanted to find out from Mr. Heitmann was whether members of the union could vote for less than a full slate. For example, he could vote for one person for one office and stop there, I assume?

Mr. Lurie: Yes.

The Court: Is that right, Mr. Heitmann?

The Witness: Yes.

The Court: I would assume so.

Q You examined the 1965 results, did you not, Mr. Heitmann? A Yes, I did.

Q Anybody can run for assembly in the union pro-
[fol. 339] vided they have one year of good standing, is that right? A That is correct.

Q And nobody in your organization assumed that that was an improper requirement, is that right? A No, no one assumed that was an improper requirement.

Q Do you know, Mr. Heitmann, how many people were necessary to elect an assemblyman in the union in the last election? A I am going by memory, but I believe that the victorious candidates had several hundred votes. I don't think anybody had as many as a thousand.

Q If I told you that in District 12 of the union, for example, candidates were elected to the assembly by a vote of as little as 639 votes and that the highest vote was approximately 675 votes, would you be able to verify that? A I would believe that would be correct. That would be consistent with my last answer.

The Court: Is this in evidence?

Mr. Lurie: This is in evidence, yes, sir.

[fol. 340]

The Court: And voting for the assembly is by districts, isn't it?

Mr. Lurie: Yes, it is, your Honor.

Q Do you have any idea how many union members are employed in the Waldorf Astoria? A No, I do not.

Q If I told you that the Waldorf Astoria employs on its payroll over 1,000 members of Local 6, the defendant in this case, would you be able to tell me by examining the results of the election whether an individual employed in the Waldorf Astoria, an individual union member, could have been elected to the assembly merely by getting the members of his own hotel to vote for him for that position? A I think without looking at the document I would agree that this was so.

Q Suppose I told you that this was true about a dozen or more hotels or approximately a dozen hotels in the

union, would you say that that was true or not? A I would have no reason to question it.

Q Did you make any effort to investigate that question [fol. 341] before you came to your conclusions? A In a sense, yes. Now, we are going to get into something that I believe might not be germane to the case. If you would like me to answer it, I will.

Q I want to know what you did to investigate whether or not individuals working in a particular hotel, members of the union, could have elected opposition candidates to the assembly from just their own body, their own group. A If you put the question that way, yes, we did inquire into it, and I'm glad you said "their own group." Within or at the lower echelons—

Q I mean the workers in the hotels by "their own group."

The Court: Let him finish his answer, please.

A At the lower echelons of the union the members meet in groups that are largely determined by craft and in our analysis of the union one of the weaknesses which we felt existed was that they didn't meet by political unit and therefore, although all of the members working in a particular hotel could have elected a candidate to the assembly, the fact was that as far as we could determine [fol. 342] they met either as waiters or as kitchen helpers or as chambermaids and there was no communication between these groups and no democratic response from the membership going back up, although the setup may be very feasible and effective communication downwards.

Q Isn't it true that if an employee worked in the hotel Waldorf Astoria that he could have in one form or another by exchange among the employees of the Waldorf Astoria called himself to their attention, whether he be in the dining room or kitchen or bar or housekeeping department? A According to the statements made by your—pardon me, by Mr. Marley earlier, there was a great deal of likelihood that this would not be so. As you will recall, he pointed out that the various dining rooms may have different units, that these dining rooms may seat customers at different times, that there are various continuing shifts around the clock in the hotels, that the

chambermaids would be on the upper floors of the hotel. In fact, members of the membership party reported to me that in attempts to go through the hotel they were at times met by house detectives.

[fol. 343]

Q Mr. Heitmann, an employee employed in a hotel can go through the hotel, can he not, and he can talk to other employees in the hotel and he can campaign among the various employees in the hotel? A I have information to the contrary. I don't know whether it is accurate entirely.

Q The information that you have to the contrary is information that was given to you by the membership party, the complainants? A It is primarily information given to us by members of the membership party. We did contact certain hotels to determine whether or not the accuracy of these statements was true, and the results were inconclusive.

Q Did you, Mr. Heitmann, go to any hotels yourself? A Not in this area. I did go to hotels but not with respect to that particular complaint.

Q Did you make any independent investigation of this complaint? A I don't quite follow you.

Q Did you make any independent investigation of the complaint that people could not reach all the members [fol. 344] of the union? A Yes.

Q What hotel did you make that investigation in? A This was primarily with respect to complaints made by Mr. Jacques Gabay. I would not recall the hotels. Mr. Gabay went to several hotels. He additionally indicated he went to local union headquarters and indicated he was removed from certain areas of both these hotels and of local union headquarters.

Q Will you please be specific, what hotels was he removed from and by whom? A As I say, I could not state that at this time. I have no recollection.

Q And what part or portion of the union headquarters was he removed from? A To the best of my recollection, he went to some area where I believe he was supposed to receive something. Whether this was a check

that he might have been due as a banquet waiter, I don't know. Perhaps you can verify that. Mr. Gabay informed me that he was asked to leave. He refused to leave and began to make speeches, at which time the function that [fol. 345] was taking place at that particular area of the hotel—of the headquarters, was moved to another area.

Mr. Gabay tried to follow it, but apparently was unsuccessful. If I recall properly, he was removed, but I may be thinking of somebody else's complaint.

Mr. Lurie: No further questions.

* * * * *

GENE QUARA * * *:

Direct Examination by Mr. Huntley:

[fol.346] Q Mr. Quara, what is your occupation?, A I am a waiter.

Q How long have you been a waiter, sir? A Since about 1948.

Q Do you belong to Local 6? A Yes, sir.

Q How long have you been a member of Local 6 A Since about 1951.

Q Tell us, Mr. Quara, have you ever held an elected position within Local 6? A Yes, sir.

Q Would you tell us what position or positions? A Actually, I held two positions. I will start with the first one. I was first elected as a department delegate in 1958 and I served consecutively that year, 1959, 1960, 1961, 1962, 1963, 1964.

In addition to that, I also served as a shop committee officer that represented the shop committee of the Savoy Plaza Hotel. This was in about 1960 and '61. In that position I was elected by the delegates of the shop committee. I was one of three that represented the shop [fol. 347] committee of the Savoy Plaza in the district council 4 of Local 6 and in region D of the hotel trades council setup.

Q As a delegate, by whom were you elected? A By the dining room employees of the Savoy Plaza.

Q With respect to your position as a department delegate, would you tell the Court what your duties were?

A Generally I handled the scheduling, the distribution of the side work, of the work load, so that it was distributed fairly. I handled grievances among the crew, for the crew, by the crew, sat in on meetings with management. I attended union meetings as their representative and at these metings like—many issues were discussed such as Medicare, social security for tipping employees—taxes on tips for tipping employees, excuse me —civil rights. Those are the broad issues.

On issues closer to our daily needs were things like seniority procedures, vacations, layoffs, department closings and the usual bread and butter needs that were necessary for our welfare and harmonious working conditions.

[fol. 348]

Q Is there anything else, Mr. Quara? A Generally speaking, as a department delegate, those were my duties, generally speaking.

Q Would you tell us with respect to your position as a shop committee officer what your duties were? A More or less the same as a department delegate but perhaps on a broader plane. The district council at one time had meetings once every three months and I as a representative of the shop committee at the Savoy Plaza attended these. At these meetings we discussed things like the medical plan, the pension plan, and also national issues. Closer to home, of course, were things like wages and negotiations. That is about it, generally.

Q I think you said this was a member of the shop committee. A Shop committee officer.

Q What particular officer were you? A At the time I was a secretary. It was a committee of three. One was a shop chairman, the assistant shop chairman, and I was the secretary, each one from a different local, so that the hotel would have a balanced representation.

[fol. 349]

Q Would you tell us about the extent of your participation in the 1962 election within Local 6? A In 1962 I was nominated to run by a Local 6 member at my

hotel for the assembly. I received a telegram from Hans Cohn, the chairman of the election and objections committee, summoning me to appear before that committee—

Q Just a minute, please.

Mr. Huntley: May I have this marked, please.

(Plaintiff's Exhibit 65 marked for identification.)

Q I show you Plaintiff's Exhibit marked 65 for identification and ask you if you can identify that (handing). A Yes, sir.

Q Would you tell us what it is? A This is the telegram that Hans Cohn sent me that I just referred to.

Mr. Huntley: I offer it.

Mr. Lurie: No objection.

The Court: Without objection, it will be received.

[fol. 350]

(Plaintiff's Exhibit 65 was received in evidence.)

Q Continue, Mr. Quara. A I appeared before this committee, as summoned, and present in the room at that time were James Marley, Hans Cohn, members of the election and objections committee, some of the 44th Street staff, and myself—perhaps a dozen people in the room.

After the preliminary prelude that Mr. Cohn agreed with me, we got to the meat of the matter. I was told that I would be running on Row B. I told Mr. Marley and Mr. Cohn—I don't remember exactly—may I say James Marley and/or Hans Cohn after telling me that I would run on Row B, I objected to this very strenuously. I told them that I had been a delegate for four years, active and leading, and I had been nominated by a member of my hotel to be on the assembly and I came to that meeting with the intent of running for the assembly on Row A.

I got no answer. They simply told me that this is the way it was, and that's it. I accepted their decision and I said, "If that is the decision, I must decline the nomi-

[fol. 351] nation," and I declined the nomination.

Q Did you, Mr. Quara, participate in the 1965 election within Local 6? A Yes, sir.

Q Could you tell us what the extent of your participation was? A In 1965 I was nominated for the position of vice-president in District 2, by a Local 6 member, and also for the vice-president in District 4, by a Local 6 member. After having accepted the nomination I received a letter from James Marley—

Q Mr. Quara, I show you Plaintiff's Exhibit marked 32 in evidence and I ask you if that is a copy of the letter to which you refer (handing). A Yes, sir.

Q. Continue. A I appeared as summoned by this letter at union headquarters, in the conference room. In that room at the time were James Marley, Hans Cohn, Jerome Lurie, Milton Waitzman, Walter Smith, members of the election and objections committee, various members of the 44th Street staff, and a large segment of our group [fol. 352] of the membership party. There might have been 30 people that were crowded into that little conference room. I told them, James Marley and/or Hans Cohn —may I explain that Hans Cohn was supposed to chair the meeting, or was seated at the chair of the meeting, but the discussion took off in many areas.

In answer to the letter, I told them that I could not give them the information as to who was appearing on the opposition slate, that this was not my function nor was I in the position to judge. Furthermore, our slate was left open for any rank and filer who wanted to run in this election.

Many things were discussed at this meeting. It was a very noisy meeting, a long meeting. We brought up things like equal opportunity, sharing the union newspaper to get our message to the members. We brought up the fact why was James Marley in that room when he was a candidate, why was Jerome Lurie in that room. We didn't bring a lawyer; this was a union meeting. And many other details were brought up in this particular discussion—

* * * *

A (Continuing) We brought up the use of the union publication and the crux was to have an equal opportunity to run in an election.

Q Do you recall anything else, Mr. Quara, about this particular meeting?

(No response.)

Q Okay, Mr. Quara, after this meeting, do you recall what happened next? A I received another letter and a telegram, as I recall it. The letter was from James Marley and the telegram was from Hans Cohn.

Mr. Huntley: Would you mark these, please.

(Plaintiff's Exhibits 66 and 67 marked for identification.)

Q Continue, Mr. Quara. A This letter and the telegram both summoned me to appear before the elections and objections committee on the Friday of that week.

Q Mr. Quara, I show you what has been marked as [fol. 356] Plaintiff's Exhibits 66 and 67 for identification and I ask you if you can identify them, sir (handing). A Yes, sir.

Q What are they? A These are the letter and the telegram that I just referred to, summoning me to appear before the elections and objections committee on Friday of that week.

Mr. Huntley: I will offer them.

Mr. Lurie: No objection.

The Court: Without objection, they will be received.

(Plaintiff's Exhibits 66 and 67 were received in evidence.)

The Court: Do you want him to tell what happened after he got these two documents?

Mr. Huntley: Yes, your Honor.

Q Continue, please. A I went to the conference room and here again James Marley was present, Hans Cohn, Jerome Lurie, Mr. Waitzman, Walter Smith, members of the election and objections committee, and the staff of 44th Street, and about two nominees—I think [fol. 357] we were allowed two at a time to enter the room —about 14 or 15 people in the room.

Hans Cohn greeted me and I sat down and he told me specifically that I was ruled ineligible to run for election.

He quoted the rules to me and I was forced to accept them.

The Court: Ineligible to run for what, Mr. Quara.

The Witness: As vice-president, for the nomination I had accepted.

A I also told them I didn't agree with it, it was unreasonable, restrictive and I remember specifically saying that I was eligible to run for the president of the United States but I could not be eligible to run for an officer in my union. There was nothing I could do.

Before I left I asked Mr. Cohn to please send me a formal notification, and this he did, sent me a letter about a week later, quoting my ineligibility.

Mr. Huntley: May I have this marked, please.

(Plaintiff's Exhibit 68 marked for identfication.)

[fol. 358]

Q I show you what has been marked as Plaintiff's Exhibit 68, Mr. Quara, and I ask you if you can identify that (handing). A Yes, sir.

Q What is it, sir? A This is the formal notification I received from Hans Cohn that ruled me ineligible to run for the election in 1965 for vice-president.

Mr. Huntley: I offer it.

Mr. Lurie: No objection.

The Court: Without objection, it will be received.

(Plaintiff's Exhibit 68 was received in evidence.)

The Witness: Your Honor, I just remembered—

The Court: Speak up, please, so that the reporter can hear you.

The Witness: At the time you asked me about that meeting, your Honor, I just remembered something specific that might be pertinent, if you care to accept it.

The Court: Is it something said by somebody?

[fol. 359]

The Witness: Something I said specifically.

The Court: At which meeting?

The Witness. At the Wednesday meeting of that week, the first meeting.

The Court: And you want permission to add that to your answer?

The Witness: If it is acceptable to the Court.

The Court: If you ask me for permission to add something to your answer, I am disposed to give you that permission. All right, go ahead.

The Witness: This is pertaining to the Wednesday meeting when all the group was present—

The Court: The one with respect to which you used the word "pressure" and about which I cautioned you?

The Witness: Yes, sir.

Q This is the meeting of Apri 21, 1965, Mr. Quara? A Yes, sir. I brought up the question of the old shop delegates, directing it to Mr. Lurie, and I specifically asked if he had any idea as to how many people were eligible to run in that election. He said he didn't.

[fol. 360]

I asked him, "Don't you think it's time that we knew who was eligible?" And he didn't answer.

The Court: All right.

Now, I believe you were at the later meeting, Mr. Huntley?

Mr. Huntley: Yes, I think we completed the meeting of Friday, April 23.

The Court: All right, next question.

Mr. Huntley: May I have one moment, your Honor?

The Court: Of course.

(Pause.)

Q Mr. Quara, you heard Mr. Lurie ask Mr. Heitmann whether or not it was possible for an employee of the union within one particular hotel to campaign within that hotel, did you? A Yes, sir.

Q Is that possible, Mr. Quara?

Mr. Lurie: Objection.

The Court: I will permit it. Overruled.

Mr. Lurie: It calls for a conclusion of the witness, if your Honor please.

The Court: Well, I know—

[fol. 361]

Mr. Lurie: Mr. Heitmann was presumably an expert who had made an investigation.

The Court: I am confining him to the hotel he knows about.

You worked only at the Savoy Plaza, Mr. Quara?

The Witness: No, sir, I have worked at other hotels.

The Court: Take the Savoy Plaza Hotel first and then, after that, Mr. Huntley, if you want to ask him about some other hotel, I will permit it.

Do you understand the question?

The Witness: Could I have the last question read?

(Question read.)

The Court: All right, with reference to the Savoy Plaza, when that hotel was operating.

Q Let me insert member of the union as opposed to an employee of the union. A That is a yes and no answer, if I may be permitted to explain.

The Court: All right.

Q Please. A If one is a member of the administra-
[fol. 362] tion not only is it possible but it is probable that he could campaign throughout the whole hotel. If he is not a member of the administration, it is impossible to campaign throughout the hotel, since if you leave your tour of duty you can be fired for that. I worked in the Savoy Plaza for ten years and there are people on the 10th floor I never even saw. There was a waiter working breakfast for six months—I worked dinner and supper—I didn't even know he was working in the hotel, in the same dining room unit.

Q Thank you.

The Court: Do you want to ask about any other hotels?

Mr. Huntley: No, your Honor. I have no further questions.

The Court: Mr. Lurie.

Cross-examination by Mr. Lurie:

Q Mr. Quara, in 1962 a full slate of candidates for office were nominated on the A slate, is that right? A

Correct—or nearly correct. I am trying to recall—I be-
[fol. 363] lieve so. That is way back. I am assuming so.

The Court: Well, does the record so show?

Mr. Lurie: Yes, I think it does, your Honor.

The Court: Do you represent that that is so?

Mr. Lurie: Yes, I represent that is so.

The Court: Then we will assume that there was a full slate in 1962 on Row A.

Q The Row A party had had its meetings and decided who it would run on that slate, isn't that right? A I believe so.

Q So that when you appeared before the election and objections committee at that time you were informed you were going to run if at all on Row B or some other line, that was because you had not been designated by the A party or the administration party to run as one of its candidates, isn't that right? A I was never told that I would not be on—yes, that may be right, yes.

[fol. 364]

Q Is that or is that not so? A Told by whom?

Q Were you designated by the administration party as one of its candidates in 1962? A Was there any official form of designation?

Q I am asking you whether you were so designated, Mr. Quara. Will you answer the question, please?

The Court: Can you answer it?

A Was I designated? No.

The Court: You were not, all right.

Q You were aware, were you not, that the administration party ran on its slate only those whom it agreed to support and who agreed to support all the candidates of the administration party, were you not? A I question your use of word "support." It is difficult for me to answer that question. Could you explain further "supporting the administration"? I am trying to give a truthful answer.

Q Were you aware of the fact that the administration party was running a slate of candidates for the assembly at that time? A I found this out at the meeting.
[fol. 365] Though I had ideas, the procedure had been a vague one.

Q At which meeting did you find this out? A 1962.

Q Which meeting? A The election and objections committee meeting in 1962 when I was told I would be on Row B.

Q Weren't there candidates nominated who were specifically nominated for the A slate at the nominations meeting? A At the general nominations meeting?

Q Yes. When you were nominated for assembly weren't there candidates also nominated for the assembly as candidates of the A slate? A No, sir. The only candidates nominated for the assembly—

The Court: I have meant to ask for some time: Is there evidence in the record of the procedure for nominations?

Mr. Lurie: I think that they probably can be pieced together by the documents that are in, but I presume we will give you more specific information on this—

The Court: I notice in the by-laws the nominating procedure is as fixed by the executive board and I don't [fol. 366] want us to stop now if it is in the record, but I don't want to be studying this and be unable to find out what the procedure was.

All right, go ahead.

Q Isn't it true, Mr. Quara, that in 1962 you had had conversations with people in which you stated that you would not support or pledge yourself to support the administration party slate for office? A In 1962?

Q Yes, sir. A No, sir.

Q Isn't it true, Mr. Quara, that you took the position that even if it were necessary to have one officer of the union run against another officer of the union that it is advisable and desirable to have two slates running? A No, sir.

Q Mr. Quara, weren't you told in 1962 that the administration slate could only run a certain number of people from each hotel? A Yes, sir.

Q And weren't you told in 1962 that Mr. Salvaria had been selected by the administration slate to be a candi- [fol. 367] date from your department in your hotel? A Yes, sir.

Q So you had been told that before the nomination meeting, is that right? A Yes.

Q So you knew, then, that the administration slate was running Salvaria for the office which you were also nominated for, is that right? A Not quite.

Q Well, you knew that the administration slate—that only three assembly delegates could be elected from any one—I withdraw that.

How many members were there working in the dining room department of the Savoy when you were employed there, if you know, approximately? A We had both room—I would say maybe 45 to 50 in both rooms.

Q 45 or 50? A Yes.

Q The by-laws provide, and I assume you are acquainted with these by-laws, are you not? A Check that: In 1962 I did not examine the by-laws too thoroughly, to be honest with you.

[fol. 368]

Q Did you know at that time that there could not be elected more than one person from your department in the hotel unless there were more than 75 members of the union employed in that department? A Not really.

Q Did you know at that time there was going to be one person elected for the assembly from your department in the Savoy Plaza, and no more? A Not really, no.

Q Weren't you told that because Salvaria was selected as the administration party's candidate that you would not be and could not be selected as such a candidate? A When you say "told," told by whom or how?

Q By anyone.

(Pause.)

A I found out, but I am trying to remember the specific incident.

Q But you did know, is that right? A Yes.

Q Did you know that before you appeared before the election and objections committee? A I was aware, [fol. 369] yes.

Q And you also were aware that you had not been designated by the A party to run on the A slate, is that right? A Not quite.

Q Did you think you had been designated by the A slate to run? A I really didn't know.

Q Had there been a caucus meeting of the A slate in your district? A Yes.

Q Had you attended that caucus meeting? A No.

Q As a matter of fact, you weren't asked or permitted to attend that caucus meeting, were you? A No, sir.

Q Under those circumstances, how could you have doubted for one second that you were not designated by the A slate as their candidate? A I doubted it because I asked the question "Who has the right to determine who goes on the A slate?"

Q You knew you were not on the A slate. What you [fol. 370] are saying you questioned their right to keep you off it, is that right? A I asked for primaries, but I never got an answer.

The Court: Wait. I think we have the facts on the record and this is now an argument between you and the witness. Let's get on.

Q In 1965 you were one of the leaders of the membership party, were you not? A "Leaders" may not be the word.

Q One of the membership party? A One of the membership party I would accept.

Q You were one of those nominated on behalf of the membership party to run for office and later disqualified? A Yes, sir.

Q Did you participate in the election campaign? A Yes, sir.

Q Will you tell us what you did during the election campaign in support of your membership party?

[fol. 371] Mr. Huntley I will object to that, your Honor.

The Court: Sustained.

Mr. Lurie: If your Honor please, this goes to the question of whether or not it affected the result of the election. It seems to be quite clear that if the disqualifications didn't affect the result of the election, we have a right to know it and have a right to put in evidence along these lines.

The Court: Well, it may affect the result of the election, not whether in fact it did.

Mr. Lurie: But it seems to me, your Honor, that the mere fact of disqualification is certainly not enough. The

Circuit Court of Appeals talks about a reasonable probability that it affected the results and we have a right, I think, to submit and present evidence which will show that it didn't affect the result of the election.

The Court: In any event, it is not proper cross-examination and whether if you recall him later as one of your witnesses when your case is being put in—whether I will exclude, I won't pass on at this time, but I will sustain the objection.

Mr. Lurie: Thank you, your Honor. I will take [fol. 372] an exception.

The Court: You don't need to take an exception.

Q Mr. Quara, when you are employed in a hotel as a waiter, you work what, about eight hours a day? A Generally.

Q You worked approximately eight hours a day, five days a week at the Savoy Plaza, is that right? A Yes, at that time.

Q On the job you had occasion— A Excuse me. What time was this, 1965?

Q 1965 or just prior, let's say, to the closing of the hotel. A Yes, in the Savoy Plaza, yes.

Q And you had occasion to some in contact with all of the waiters on your shift, in any event, from day to day, is that right? A On my shift?

Q That's right. A Yes.

Q You had occasion to come in contact with other waiters in the hotel at department meetings in the hotel, is that right? A When we had the meetings.

[fol. 373]

Q All the workers reported to work at one time or another through the same entrance, is that right? A I believe so, yes.

Q And they left at the same exit, is that right? A Yes, sir.

Q Are there common locker rooms in the hotel that are used by different groups of workers? A In the Savoy Plaza we had different locker rooms. The waiters were together, generally speaking, and a few dishwashers, but the rest of the people had different locker rooms.

Q If you had—not on your working time, but on the time when you were off the job—put yourself to it to dis-

cuss and talk with the other employees in the hotel in other classifications and in other departments by either meeting them at the hotel entrance or exit or in their locker rooms or by giving them leaflets and so on, you could, could you not, reach practically all if not all of the union members in the hotel? A No.

Q Why do you say that is not so? A That is [fol. 374] a yes-and-no question. May I clarify?

When I was a delegate at the Savoy Plaza it was reasonably feasible to do that with members of my department. Even as a delegate, I could not go to the other departments or the other floors. There was one particular banquet meeting that as a delegate I always attended this meeting and Lubos Pavlista was there, whereby he asked me to leave the room—

Mr. Lurie: If your Honor please, this is not responsive to my question, which is, could he contact the other employees of the hotel by meeting them at the gate of the hotel, in the various locker rooms and so on when he was not at work, and I think I am entitled to an answer to the question.

The Court: I can't tell whether it is responsive or not at this point. I assume he is talking about a meeting in the Savoy Plaza Hotel.

Isn't that what you are talking about?

The Witness: Yes, sir. I could only meet them at the entrance, nowhere else.

The Court: He is talking about a banquet meeting in the Savoy Plaza Hotel and he is about to tell us, [fol. 375] I assume, that he was asked to leave and is giving that as a reason why he couldn't contact employees at the hotel.

Mr. Lurie: If your Honor please, in the first place—

The Court: You asked him why he says he couldn't—you asked him why he couldn't establish communication with every union member in the Savoy Plaza Hotel.

Now, that kind of question is very, very broad and he is entitled to finish his answer.

Go ahead and finish your answer, Mr. Quara. This is what counsel wants to know:

Why do you say that it was impossible for you to

communicate with each union member in the Savoy Plaza Hotel. Now, that is the question.

The Witness: Why, did you want to know?

The Court: That is what he wants to know.

A Because I had no business in any other department outside of my own.

Q I am asking you now whether you could not have, you or any group of individuals who wished to contact, made it your business to contact them by stationing yourself at the entrance of the hotel, where the workers [fol. 376] come and go, or by going from one locker room to another in the hotel? A No, sir, only at the entrance, nowhere else.

Q You could have done it at the entrance? A Only at the entrance, nowhere else.

Q There was a long period when you were shop chairman, isn't that right? A No, sir, I was never shop chairman.

Q You were shop secretary? A Shop officer—yes, secretary in this committee of three.

Mr. Lurie: I have nothing further.

* * * *

[fol. 378]

The Court: I think we will stop now. I want to ask, in the first instance, Mr. Lurie to explain something to me, and if there is anything Mr. Lurie tells me that Mr. Kushner wants to comment on, he may, and unless the parties want it, I don't think it needs to be on the record.

I cannot get through my head the department and district setup. They are, to me, tangled and confused. I can't understand the department-district setup.

As I say, we need not prolong the record by having it done on the record, unless the parties want it.

Mr. Lurie: I see no reason to keep it on or off, whichever your Honor prefers.

The Court: It just makes the record longer.

All right, I will take it on the record. The point is, it is just education.

Mr. Lurie: I understand.

If your Honor please, when this union was first or-

[fol. 379] ganized it was organized along an industrial line. However, the tradition—

The Court: What does that mean?

Mr. Lurie: The Hotel and Restaurant Employees Union is traditionally composed of various craft unions. Thus in New York, outside of the hotel industry, there is, for example, chefs, cooks, pastry cooks, Local 89, which takes only the kitchen work, there is the dining room employees union, Local 1, which takes the waiters, waitresses, cashiers and captains. There is the bartenders union, Local 15, which takes only the bartenders, bar boys, and so on. Those are three separate local unions operating separately, each of which goes into an employer and negotiates a contract.

The Court: Operating today?

Mr. Lurie: Yes.

The Court: Where does Local 6—

Mr. Lurie: I said outside of the hotels, your Honor.

The Court: All right.

Mr. Lurie: What happened was that in the hotels it became apparent that to have this many unions was impossible, that the whole craft setup was impossible, that [fol. 380] employers didn't want to negotiate with all sorts of different unions, that there would have to be ten or twelve unions in there and if you settled with one and another went on strike, you might have a picket line.

The Court: If I am in the restaurant business, I have to deal with separate unions?

Mr. Lurie: Generally speaking, yes.

The Court: But hotels are different?

Mr. Lurie: Yes, sir. What happened in the hotels are that first Local 6 was organized and Local 6 took within its scope maids, housemen and the various other categories in the kitchen, dining room and bar and so on.

The Court: So one session can bargain for all the categories?

Mr. Lurie: Yes, sir. The Trades Council was orgaized of which Local 6 is part and they represent the electricians and so on and they all bargain as a group.

Although Local 6 was organized on the basis about which I have just spoken, there was a tradition in this

union of crafts. In other words, the bartenders wanted to be represented by their people, wanted their particular [fol. 381] craft interest to be represented and wanted to be sure that in the officialdom of the union there would be somebody there to speak for the bartenders and somebody who understands bartenders problems.

The same thing went for the maids, the same thing went for the dining room, and the same thing for the kitchen. Each of these groups wished a representation.

So in organizing the union, although it was negotiating on an industrial basis, and although it was attempting to operate industrially, that is, with one union talking for all and negotiating for all, the union was also divided, at the same time it was divided into districts, into departments, and the departments are on a craft basis, the districts are on a geographical basis.

If you have a problem, for example, that affects all of the dining room workers throughout the city in the hotel, a meeting of the dining room department will be called, which is a union-wide department.

The Court: Yes, but when we elect delegates to the assembly, we elect delegates on a geographical basis [fol. 382] by district.

Mr. Lurie: For example, in a district—there may be in one particular district 40 per cent—40 per cent of the workers may turn out to be in the housekeeping department and 60 per cent in the remaining. If the housekeeping department went in and voted en masse for its people it might be able to elect all the assembly delegates from that particular geographical district.

The Court: Because the delegates are by numbers of members of the union of any department in that district?

Mr. Lurie: That's right.

The Court: Total number of members of the union?

Mr. Lurie: No. Let us say that there is in a district 7500 members as a whole and let us say there will be 750 members in the bar department. The union would elect in that district then 100 delegates, because there is one for every 75. The bar department would be entitled to elect, if it had 750 members, ten of those delegates. That doesn't mean that only the bar department people

would vote for the delegates. Everybody in the district [fol. 383] votes for all candidates, but the first ten bartenders, then—in other words, the first ten candidates for the bar department who receive the highest votes would be elected even if there were people, as I think Mr. Kushner pointed out earlier today, who received more votes but were at the tail end of a housekeeping department.

Am I being too—

The Court: Well, wait a minute. After we have figured out how many delegates each department is entitled to, and let's assume in this district that adds up to a hundred delegates—

Mr. Lurie: All right.

The Court: 100 is the total number of Delegates.

Mr. Lurie: All right.

The Court: Therefore, if a hundred delegates are to be elected, let's say, from District 4, on Row A there will be a hundred names?

Mr. Lurie: That's right, your Honor.

The Court: Will those hundred names be split according to craft or according to department into ten bartenders, 20 maids, and so forth?

Mr. Lurie: Well, Row A would attempt to nominate [fol. 384] on that basis because you could not elect more than, say, ten bartenders if there were only that many department members in the particular district. So they would, as you say, attempt to nominate ten bartenders.

The Court: That is the way they would do it?

Mr. Lurie: That's right.

The Court: Everybody votes the full slate—in other words, although ten of the hundred nominees on Row A for the assembly are bartenders, the bartenders vote for a hundred delegates?

Mr. Lurie: That is correct.

The Court: If we assume a situation where there is a Row B and Row C and there are a hundred nominees on each row, then we find out who gets the most votes and let's say that the Row C nominees were all maids and each got 2,000, on Row C, but on Row A ten of the nominees were bartenders and they only got 700 votes

each; what you have told me, then, is that when the votes are counted ten of the maids would have to be thrown out, even though they got 2,000 because there has to be ten bartenders?

Mr. Lurie: That is right, sir.

[fol. 385]

The Court: So somebody in the election committee, I assume, has to keep a pretty close tab on whether John Doe is a bartender or a waiter, doesn't he?

Mr. Lurie: Not somebody in the election committee but the people nominating would have to do it—it is true that at the time of any election, counting the vote, yes, one would have to know.

The Court: There is nothing on the voting machine which distinguishes between—

Mr. Lurie: That's right, your Honor.

The Court: I think I understand that, and the practical working out of the system is, therefore, that the different crafts or departments have something like proportional representation?

Mr. Lurie: That is exactly what we tried to do and that is the purpose of department caucus meetings, to see to it that this particular department will nominate enough people to represent it.

We have a difficult and complicated structure because we are trying to represent everybody in every way.

The Court: And then the day-to-day work of the departments during the year, when there is no election in-

[fol. 386] volved—the department in any given district would naturally be concerned with the more specific problems of the department or craft because they are different from some other craft?

Mr. Lurie: Yes, your Honor.

Mr. Cohn: Just to complicate the problem further, this is something we have had to wrestle with since the union has been in existence. You have another situation which is troublesome. You take the district in which the Hilton Hotel and the Americana are located; those two hotels have more than a majority of all of the employees in the district. If you were to take all the other hotels in the

district and just have voting by those two groups of employees, none of the other hotels would have any representation at all in the assembly from that district.

The Court: That is that bylaw provision about not more than three delegates from any house?

Mr. Cohn: Yes, sir. This is a set of bylaws which is calculated as far as we can to see that the democratic process is scrupulously preserved.

How do you do it in such a way to give actual meaning to the concept that every group in the hotels and every [fol. 387] hotel is represented?

Your Honor has picked on the obvious thing, the housekeeping department, which is a large department.

If the housekeeping department votes en bloc not only the bartenders but you might find the kitchen workers union represented. Therefore, over the years, and it is 25 years we have been wrestling with these problems and making amendments to the bylaws, it has been designed to get the best functioning plan of organization that we can and I think your Honor very quickly came to some of the problems that were confronting us and realized the complexity of these problems.

The Court: Leaving to one side for the moment the qualification issue here, if you have two or more competing slates, the people who would be interested in running a full slate of assembly delegates in any district would have to juggle their nominees, (a) between the departments or crafts and then between the houses, because if they nominated five from one house and they couldn't elect but four, they have already thrown one away before they have even started.

[fol. 388]

Mr. Cohn: What they would have to do is try and live within the framework of a structure which is designed to give everybody representation.

The Court: They would have to fit the pieces of their slate together like a mosiac.

Mr. Cohn: Certainly. It is the intelligent and fair and obvious thing to do, just as we do in our general elections.

The Court: Except we don't have quite that—it is not quite as difficult.

Mr. Cohn: Should I say that this illustrates the reason why Congress didn't set down specific regulations covering the 50 states of the Union; it is impossible to have a cookie-jar mold that would fit every situation.

* * * *

[fol. 392] * * *

CHARLES SALAVARRIA * * *:

Direct Examination:

Q Mr. Salavarria, what is your occupation? A I am an a la carte waiter.

[fol. 393]

Q What is an a la carte waiter as distinguished from another type of waiter? A An a la carte waiter works in mainly dining rooms. He works off a menu, takes the orders from customers and usually knows French service.

A banquet waiter has a fixed menu, sets his tables up, and a counter waiter, well, that speaks for itself.

Q Are you a member of Local 6? A I am.

Q How long have you been a member? A Since 1958.

Q Have you held any elected positions in Local 6? A When I was employed at the Savoy Plaza I was elected assistant delegate and held the office of shop chairman and I was also elected in 1962 to the assembly of Local 6.

Q During what period of time were you employed at the Savoy Plaza? A I believe it was from 1959 to 1963, when they closed the Columns, the nightclub, and they laid us off.

Q You mentioned a moment ago that you were an [fol. 394] assistant delegate. How did that differ from a department delegate? A Let's get the departmental thing straight: By department, we mean in the area you are in. Like I was in the Columns and there were 27, 28 waiters in the Columns. In most unions they call them

shop stewards but in this union they are department delegates. I was assistant I think to Gene Quara—Quara was the delegate and I was assistant to him. We handled day to day grievances in that one area, we took care of the busboys, bartenders, waiters and the waitresses in that little area—

The Court: That area is a department?

The Witness: No. The area is the Columns. The dining room department in our hotel consisted of the Savoy Room, which was the bar, cafe lounge, and we had Trader Vic's, which had two hundred employees, and we had room service waiters and we had little garden, Petit Jardin, which had two waiters and a busboy, I believe.

The Court: All of those were the department?

The Witness: The dining room department in the hotel.

[fol. 395]

The Court: Mr. Quara was the—

The Witness: Delegate of the Columns.

The Court: Not of the whole department?

The Witness: No, of the Columns. Each department had their own delegates. The Savoy Room had its own delegates, Trader Vic's had its own delegates, room service had its own.

The Court: What were those delegates called?

The Witness: Dining room delegates.

The Court: What does department delegate mean?

The Witness: The way they divide it up, the dining room department, and then they say the Columns delegate, but the union does definitely define which room we are in when these delegates—

The Court: All of these delegates, from Trader Vic's and the Columns, and so forth, all of them would be called, as I understand it, by you, department delegates?

The Witness: Correct.

The Court: You were one of the assistant department delegates?

[fol. 396] The Witness: I was elected to that office.

By Mr. Kushner:

Q You also mentioned you were shop chairman. How did you come to be shop chairman? A I believe in 1961 I was elected shop chairman by the entire shop committee in the Savoy Plaza. That consisted of about 40 different delegates from various unions, departmental delegates from the various ten unions we had in the Savoy Plaza. At that time they made an assistant shop chairman and secretary. Mr. Harold Rohr, our regional director worked it out as three people, one from Local 6, and it so happened that two came from Local 6 at that time, and one came from the Local 1 of the Upholsterers' union, I believe.

Q Have you seen Exhibit 57 prior to my showing it to you now (handing)? A I received this sometime in April. I don't recollect the exact date.

Q Exhibit 57 is a letter you received in April 1962? A Yes, sir.

Q Exhibit 57 speaks of a special administration cau- [fol. 397] cus of dining room members of District 4 on Wednesday, April 11, 1962.

Did you attend that caucus? A I did.

Q At that caucus were you considered in any way for a position on the assembly of Local 6? A At the caucus I was told, and we worked out a system where I would be nominated at the nomination meeting on the administration slate.

Q Prior to that caucus of April 11, had anyone from the administration party discussed with you the possibility of your being nominated for the assembly on Slate A? A As far as I can recollect, in the areaway between Trader Vic's—you have to know the layout—there is a big areaway before you come into Trader Vic's and before you come into the main kitchen—in that areaway I met I think Betty Smith, Mr. Pavlista and I believe Vito Pitta was present—I am not too sure. I think there were three present and at that time everybody used to meet me there and come through—when I was the shop chairman there were always discussions and politicking and everything else involved in that. At that time I asked

[fol. 398] Betty Smith what is the meaning of this letter. She says "We have caucuses. In order to run a slate, you have to have a caucus and you have to have somebody nominate you and you have to know you are going to be nominated."

I said, "Fine, but I am only here two years." I says, "There are other people more qualified than me, other people in the dining rooms," a few names I mentioned, Gene Quara, "and I think they would be better representatives of the dining room department than I am. I am only a waiter since 1958."

She said, "No, you are a shop chairman, part of the administration, and you go to the caucus."

I went to the caucus and was nominated. I don't know who it was that gave my name, but I think it was Ophelia Hunter from the laundry department, I think she did. I nominated somebody else, I don't recall who, and that is how I got on the assembly slate and that is how I was elected.

The Court: Mr. Witness, try not to talk too rapidly because we have a reporter here and he has to take it all down.

The Witness: I'm sorry.

[fol. 399]

The Court: Your natural speech is a little rapid and, if you can, try to go a little slower.

The Witness: Right, and I am hampered by my new teeth I put in.

Q As best you can recall, when was this meeting that you just spoke of between you and Miss Smith and Mr. Pavlista? A I think it might have been the day before —what was it, April 11—April 10 or 9, or even that same afternoon, early in the afternoon. I don't recollect exactly the meeting, but the meeting took place there and Fontag Poo—that is an Oriental name—was an ex-assemblyman and I says "Who is going to be from the Trader Vic area? We have over 200 waiters in our place and we rate at least four or five delegates from the Savoy Plaza?"

They said, "We'll take care of it."

And when I went to the caucus I noticed Poo was not present and Quara was not present there.

Q Is it your testimony that at this meeting prior to [fol. 400] the caucus Miss Smith or Pavlista or the third person mentioned to you that you would be put up on the administration slate or assembly? A They definitely said "You are going on the A slate and that is the way it is run."

I says "What about the other people?"

"Well, they could be nominated from the floor and put on other slates, B or C or some other slate."

Mr. Kushner: No further questions.

Cross-examination by Mr. Lurie:

Q Mr. Salavarria, when did you go to work at the Savoy? A I believe it was in 1959 or 1960, it could be. I'm not that sure.

Q You shortly thereafter became an assistant delegate, is that right? A Yes, sir.

Q Then you became a shop chairman, is that right? A Yes.

Q Was that shop chairman for the dining room department or for the whole Savoy? A The whole hotel. [fol. 401] Q For the whole hotel? A That's right. I represented all the unions in that hotel. I did the day-to-day bargaining and represented them at meetings, as many meetings as I could attend with the other meetings. I attended most of the meetings held in various departments and with the various locals in the union. I was sort of a liaison between their business agents and the first and second steps of the grievances, in other words, the preliminary grievances with the lower echelons, until you went to the personnel department, until you went to the association and called the business agents.

Q You devoted a great deal of time to union affairs, did you not? A I would say a lot of my time was taken up in union affairs.

Q You didn't get paid for any of this? A No, sir.

Q Would you say that you were a rank and file worker in the hotel at the time? A By rank and file, will you define what you mean by that?

Q Would you say you were just a single ordinary [fol. 402] member in the union more interested in union affairs than a lot of other members? A In our hotel the whole Columns were very active. Every one of those people could have been very good delegates in various situations. I just happened to be situated in a very good union shop, in a good dining room where we had very good business agents, as far as Local 6 went, and we were very active in it.

Q When I say rank and file, I mean you were not a paid official of the union? A No, sir, but I—go ahead.

Q When you went to the caucus meeting was there a vote at the caucus to support your nomination and to put your nomination in? A When I went to the caucus meeting there were 40 or 50 people present. The names that were given out—we gave out names and they worked out a system by which everybody would be nominated. In other words, everybody on the lists that the administration had already made up that they wanted to be on it, they were interested in seeing on the administration slate, were given to the various delegates. I had no fore-[fol. 403] thought, I didn't think of remembering all these things—

Mr. Lurie: If your Honor please, this is not responsive to my question, which was quite simple. I asked if there was a vote at the caucus meeting.

A There was a vote.

The Court: There was a vote?

The Witness: Yes. I'm sorry.

The Court: That is all right.

The Witness: I thought he wanted me to elaborate on the situation.

The Court: Next question.

Q Did you vote for the slate to be nominated at that time? A At that time I voted for the slate. I was an administration man—

Q Just yes or no. A Thank you. Yes.

Q Did you ever take any pledge of any sort that you would be a part of and support—withdraw that.

At that time what pledge, if any, did you make at the caucus or in connection with the caucus? A At the

[fol. 404] caucus I didn't make any pledge.

Q Did you pledge yourself to support the other candidates on the ticket? A At the caucus?

Q Yes. A We did.

Q Did you make any other pledges? A The only pledge was swearing in.

Q And that is all? A That is all. When I took office as a shop chairman I pledged to support all the various locals in the trades council.

Q As a matter of fact, you ran in 1962 on the A slate, is that right? A Yes, sir.

Q And in 1965 you were nominated and you ran on the membership party or the B slate? A I ran on the membership party slate, which you designated as Row B.

Q Which ran on Row B, is that right? A Yes, sir.

Q You ran for what office? A General organizer.

[fol. 405]

Q Did you run for any other position? A No, sir.

Q Who did you run against? A I believe it was Betty Bentz.

Q Did you run for general organizer? A Yes.

Q You ran against Vangil Kamaras? A Yes.

Q How many votes did you get in that election? A I believe it was—I really don't recollect the amount. I think something like 900 and something or 1300. I am not sure of the figure. If you have the figure, you can call it out.

[fol. 406]

Mr. Kushner: May the record reflect I am handing Mr. Lurie Exhibit 34.

The Court: All right.

Q If I say to you that you received 1,299 votes, would that refresh your recollection? A If you say that is the figure, that is the figure. I don't have anything in front of me, sir.

Q I show you Plaintiff's Exhibit 34 and ask you whether that refreshes your recollection. A Yes, sir.

Q How many votes did Mr. Kamaras get? A 9,216 votes.

Mr. Lurie: Will your Honor indulge me for a moment?

The Court: Certainly.

(Pause.)

Mr. Lurie: Will you mark these two for identification, please.

(Defendant's Exhibits B and C marked for identification.)

Q Mr. Salavarria, did you participate in the 1965 election campaign? A Whose campaign?

Q Did you participate in campaigning during the [fol. 407] 1965 election? A Yes, sir.

Q For whom did you campaign? A Naturally, for the membership party.

Q What activity did that involve? A That involved going to hundreds of hotels. It involved meeting and interviewing and talking to hundreds of people that were already told about us, were hostile to us. That involved putting notices out. That involved the rank and file of waiters and bartenders spending hundreds and hundreds of dollars and our own time, and trying to support our families at the same time, and trying to get into office and straighten out what we figured was wrong there.

Q Did you have regular meetings? A We had regular meetings. We had the Woodstock Hotel which we rented at our own expense, an office, which we opened to all membership. We said anybody could run for office in the union. We didn't have any secret caucuses but we were limited to how much we could put out.

Q I show you Defendant's Exhibit C for identification and ask you if you recognize that. A That is one of our leaflets.

[fol. 408] Q Was this leaflet distributed by the membership party? A This was distributed by the membership party.

Q At all of the various hotels— A As many hotels as we could physically put in, that we weren't thrown out of or weren't harassed in.

Mr. Lurie: I offer it in evidence.

A (Continuing) There were only about 1,000 of those put out—I am not finished—

Mr. Kushner: Your Honor, I will object to this on the ground that I fail to see its relevancy to the issues in this action.

The Court: Well, I will permit it and treat your objection according to its weight.

(Defendant's Exhibit C for identification received in evidence.)

Q Mr. Salavarria, there were other people, were there not, on your membership party slate; is that correct? A There were other Local 6 members that decided to run for office, yes, sir.

Q One of them was Armando Carballo? A I be-
[fol. 409] lieve he ran for president.

Q Did he campaign? A I believe we all campaigned.

Q Did Mr. Quara campaign? A We all campaigned within our limited scope.

Q I show you Defendant's Exhibit B for identification and call your attention to a list of names on the back. Did all of those people campaign? A All these people were supposed to have campaigned.

Q Did they? A I couldn't very well say. I know where I was. I don't know where these people were.

Q Don't you know whether or not they all did participate? A They all had assignments.

Q And if they didn't carry out the assignment— A There was no way I could check on it.

Q —it was because they decided they didn't want to, is that right? A No, not necessarily.

Q They all had assignments? A Yes.

[fol. 410]

Q And if they didn't carry out the assignments it was because they decided not to do so? A Because they didn't do so, not because they decided not to. I can't know what reason they had for not doing it.

Mr. Lurie: I offer Defendant's Exhibit B in evidence.

The Court: I will assume the same objection and make the same ruling.

Mark it.

(Defendant's Exhibit B for identification received in evidence.)

Mr. Lurie: I have no further questions.

* * * *

[fol. 411]

CHARLES SKOPIC * * *

Direct Examination by Mr. Huntley:

Q Mr. Skopic, where do you reside? A In Kensington, Maryland.

Q By whom are you employed? A The United States Department of Labor.

Q How long have you been an employee of the United States Department of Labor? A Since July 1960.

Q Did you attend college, Mr. Skopic? A I did.

Q Would you tell us what college? A The Pennsylvania State University.

Q Where is that located? A University Park, Pennsylvania.

Q Did you receive a degree from the Pennsylvania State University? A Yes. I received a Bachelor of Science degree in Business Administration and a Master of Arts degree in Economics.

Q In what year did you receive your Bachelor of [fol. 412] Science? A 1959.

Q In what year did you receive your Master of Arts? A 1962.

Q Would you tell us in what capacity you joined the Department of Labor? A I was hired as a management intern.

Q Would you tell us what you did in that capacity? A This is a training capacity. I worked in a variety of assignments to learn the operation of the Department and I was engaged primarily in economic and social research and in programs related to the Labor Management Reporting and Disclosure Act.

Q How long were you in that particular capacity, Mr. Skopic? A Until August 1962.

Q Then what did you do? A I worked as a labor law administration advisor.

Q In that capacity, what did you do? A I worked on cases involving Title IV, the election provisions, of the Labor Management Reporting and Disclosure Act.

[fol. 413]

Q How long did you serve in that particular capacity? A Until January 1964.

Q Then what did you do? A I was assigned as a labor economist in the research division of the Labor Management Services Administration.

Q In that capacity what did you do? A I participated in research studies on the administration and operation of labor unions, welfare and pension plans, and engaged in studies of collective bargaining.

Q How long were you in that particular capacity, Mr. Skopic? A I was a supervisory labor economist until November of 1966.

Q What happened then, sir? A I was promoted to the position of assistant chief of the Division of Research and Analysis in the office of Labor Management Policy Development of the Labor Management Services Administration.

Q Occupying the position you just described, would you tell us generally what you do? A I supervise the [fol. 414] work of six labor economists conducting studies of the administration and operation of labor unions, welfare and pension plans and studies of collective bargaining.

Q Did you conduct a study of labor unions with respect to this litigation? A Yes, I did.

Mr. Cohn: I object to the form of the question. It is too broad, sir—conduct a study of labor unions?

The Court: That will be probably Mr. Huntley's next question. I will permit it. Overruled.

Q Would you answer, please? A Yes, I did.

Q By whom were you requested, if anyone, to conduct this study? A The Solicitor of Labor asked that our office conduct a study of prior office-holding in labor unions to determine the prevalence of this particular requirement.

Q And did you conduct such a study? A Yes.

Q Would you tell us what source material you used in conducting this study? A We studied the governing [fol. 415] documents of labor unions filed with the Department of Labor pursuant to the requirements of Title 2 of the Labor Management Reporting and Disclosure Act.

Q Did you conduct more than one study? A Yes, we actually conducted four related studies.

Q Would you tell us how you conducted with a little precision these studies? A We examined the governing documents that had been filed with the Labor Department to determine if these Government documents contained any prior office-holding provisions.

Q You say "governing documents." What documents do you refer to Mr. Skopic? A For national unions it was the National Unions constitution. For local unions, it was the Local Unions by-laws.

Q Now, after you completed your study, what did you do, if anything? A We prepared four tables showing the results of our study.

Mr. Huntley: May I have these marked, please, in the order in which they are given to you. There are four documents.

[fol. 416]

(Plaintiff's Exhibits 69 through 72 marked for identification.)

Q Mr. Skopic, I show you—

Mr. Lurie: Mr. Huntley, may I ask a question? Just for the purpose of my understanding when the witness refers to "national unions," does he really mean international, what we consider international unions? I would just like to know before he testifies further so we understand what he is talking about.

The Witness: Yes, national or international unions.

Mr. Lurie: Yes.

The Court: You are using the words interchangeably?

The Witness: Yes. Some of the unions have a jurisdiction which goes beyond the United States and would therefore be referred to as an international union. Some

have a jurisdiction limited to the United States and they would be referred to as a national union.

The Court: And when you used in your prior testimony the expression "national union," you meant to include international unions, too?

[fol. 417]

The Witness: Yes, your Honor.

The Court: All right.

Q Mr. Skopic, I show you Plaintiff's Exhibit 69 for identification which is captioned "Prior Office-Holding as a Qualification for Local Union Office as Provided in By-laws of Large, Hotel and Restaurant Employees' Local Unions, May 1965," and I ask you if you can identify that, sir. A Yes, this is a copy of one of the four tables that we prepared.

Q I notice on the top of Plaintiff's Exhibit 69 for identification, Mr. Skopic, that the words "Prior Office-Holding" appear. Would you tell us what you meant and/or what you mean by "prior office-holding"? A Any provision which would require that a candidate for union office have held some previous office or position within the union to qualify for office.

Q Thank you.

* * * *

[fol. 422]

The Witness: We examined the by-laws and where the by-laws made a distinction and limited the prior office-holding to specified officers such as the president and secretary-treasurer office only, or where the by-laws said "to be eligible for a paid office or a salaried office," then that local union was classified in the column headed "Principal or Salaried Officers Only."

Where there was no such distinction and the prior office-holding requirement applied to all of the officers, then it was listed in the column headed "All Officers."

Whether in fact the—all the officers may be paid or not, it was simply done on the language in the by-laws. Some restricted to certain positions only. Others didn't.

Q I see. So that if all of the officers in a union are paid officers, then there is, according to you, no distinc-

tion to be drawn between your column which is headed "Principal or Salaried Officers Only" and "All Officers," is that right? A It is simply on the basis of the language in the by-laws.

[fol. 423]

Q I see. A And not the fact of whether or not all the officers are compensated or not.

Q I see. So that you didn't go into each local union that you examined into in order to determine whether all officers are paid officers, as a matter of fact? A No, sir, I didn't.

Q Okay, that clears that up, and I appreciate that. A All right.

* * * *

[fol. 424] * * *

Q Now, Mr. Skopic, how did you determine which unions you would choose as your test union? I notice, for example, that on this exhibit you have five of the local unions in New York. What made you pick Local 2 in Brooklyn with the representation that it is a large union with 1,600 members and skip Local 89 in New York with over 10,000 members? A Local 89 is included on the exhibit. If I may explain the basis for selecting the local unions for inclusion, Footnote 1 explains the basis used to select the unions. The official report of Daily Convention Proceedings of the 36th General Convention of the Hotel and Restaurant Employees Union shows that the average membership in 1965 for the union's 485 locals in the United States totalled 435,869.

Taking the arithmetic mean average of those 485 locals gives an average of 899 members per local.

In order to examine the by-laws of large locals we included all the by-laws of locals above the average in membership size; that is, 900 or more members.

[fol. 425]

Q So that your approach to this is basically a statistical approach and your—you didn't go into the questions of the reasonableness of the by-laws of any of the locals that you studied? Am I correct about that? A Yes, sir. We simply examined the by-laws for the office-hold-

ing requirements to determine if prior office-holding was required.

* * * *

[fol. 428] * * *

Direct Examination (Continued) by Mr. Huntley:

Q Mr. Skopic, I notice on Exhibit 69 in evidence that there is a column entitled "Date of By-laws," and under that there are several numbers corresponding to various unions. Would you tell us precisely what is meant by that column? A The date of the by-laws refers to the month and year, or if no month or year could be determined, simply undated; the effective date of the documents that were studied, for example, for Local 6, the date is 11/63. That means that the documents that were studied for Local 6 were last amended and then made effective in [fol. 429] November of 1963. These are the documents which were in effect as of May 1965, the date of the disputed election.

Mr. Huntley: Your Honor, I am awfully sorry, I meant to hand this up to your Honor so you could follow the examination. That is a copy of the exhibit (handing to the Court).

Q Would you tell us what your finding was with respect to this study, Mr. Skopic? A Yes. With respect to the Hotel and Restaurant Employees' local unions, we found that 32 out of 125 of the local unions had a prior office-holding requirement. This is approximately 25 per cent of those studied, or phrasing it alternatively, approximately 75 per cent of these local unions didn't have such a prior office-holding requirement.

The local unions, as I previously stated, are all those above average in membership size according to the figures listed in the Hotel and Restaurant Employees' Union Convention proceedings of May 1966.

Q Just for the record, would you tell us again whether or not the constitution and by-laws you studied with respect to Plaintiff's Exhibit 69 were in effect in May of [fol. 430] 1965? A Yes, they were.

Q Thank you.

The Court: I take it there is some requirement of law that the by-laws be filed with the Department of Labor?

The Witness: Yes. Under the requirements of Title 2 of the Labor Management and Reporting Disclosure Act, every labor organiaztion subject to the Act is required to file its governing documents with the Secretary of Labor within ninety days of the date that it becomes subject to the Act and then to notify the Secretary of Labor of any changes in these governing documents.

The Court: Are documents, when they are filed with the Secretary, available to the public?

The Witness: Yes, they are, your Honor. They are available for public disclosure at the Labor Department's Washington office and also at various field offices throughout the United States. The local unions who are located in that area have a duplicate file available to the public at that field office.

The Court: You mean I can walk in off the street to a field office or to the Department in Washington and look at any of these?

[fol. 431]

The Witness: Yes, your Honor. For example, with regard to Local 6, you could go to the New York office of the Labor Department and look at the file for Local 6 with the 1963 by-laws in it.

The Court: All right.

Q Mr. Skopic, I show you what is marked as Plaintiff's Exhibit 70 for identification and I ask you, sir, if you can identify that.

Mr. Cohn: Which one is that, Mr. Huntley?

Mr. Huntley: Plaintiff's Exhibit No. 70 for identification is captioned "Prior Office-Holding as a Qualification for National Union Office as Provided in Constitutions of National Unions with 20,000 to 40,000 Members, May 1965."

Mr. Cohn: All right, thank you.

A Yes. This is another table prepared during our study of prior office-holding.

Q Am I correct in assuming that you only studied unions with membership between 20,000 and 40,000 members? A For the purpose of this table we looked at all national unions with 20,000 to 40,000 members according to the Bureau of Labor statistics directory of national [fol. 432] and international labor unions in the United States, 1965.

Q Why do you do that, Mr. Skopic?

Mr. Cohn: I object to that as immaterial.

The Court: No, I will let him answer because I imagine he is going to say that because the International union with which Local 6 is affiliated has a membership of around 40,000.

Mr. Cohn: No, it has a membership of 365,000, according to the exhibit which is in evidence.

The Court: Well, it may affect the weight, then, for all I know. I will permit it.

A We examined national unions with 20,000 to 40,000 members because this is approximately the membership range of Local 6, which has 27,000 members approximately. This table examines the qualifications for national union office contained in national union constitutions as opposed to local union office qualifications.

The Court: And are you including international unions in the word "national"?

The Witness: Yes, your Honor.

The Court: All right.

Q When did you conduct this study, Mr. Skopic? A In December 1966.

[fol. 433]

Q And did you study various constitutions and by-laws? A Yes. Of the twenty-three national unions listed on this table, we studied the national union constitution and found that none of them—

* * * *

Q Mr. Skopic, would you tell us what the result of your study, as reflected in Exhibit No. 70, is? A We found that of the twenty-three national unions with from 20,000 to 40,000 members, that none of them imposed a

[fol. 435] prior office-holding requirement on candidates for national union office. The only requirement that could be related to prior office-holding was that two of the twenty-three limited the eligibles for national office to the convention delegates. This is not strictly a prior office-holding requirement because convention delegates would not be ordinarily considered as officers of the union, but they are listed here to give the complete picture of these twenty-three unions.

Q Would you tell us whether or not the constitutions, and I believe you so testified earler that you did study the constitutions of the unions listed and the first column of Exhibit 70 marked "National Union"—would you tell us if those constitutions were in effect in May of 1965?
A Yes, these are the constitutions which were in effect in May 1965.

Mr. Cohn: Mr. Huntley, I wonder whether I might impose upon you to have the stenographer go back and give us the questions and answers he has to the two questions previous to this when he discussed convention delegates?

The Court: Yes, would you go back and read the last few questions, Mr. Reporter?

[fol. 436]

Mr. Cohn: Thank you for your indulgence, your Honor.

(Record read.)

Mr. Cohn: Thank you, that is what I wanted to know.

The Court: Mr. Skopic, let's go back to Exhibit 69. Do you have that?

Now, under your definition of "prior office-holding," did you classify as prior office-holding a requirement that officers have served as convention or assembly delegates?

The Witness: Yes, your Honor. We—in looking at the prior office-holding requirement, we considered the requiring of the service in any type of position in the union to qualify for office as a prior office-holding requirement, and although I don't believe that it appeared in

any of the thirty-two unions here, if a local had required service as convention delegates in order to qualify for office, that would have been classified as a prior office-holding requirement on Exhibit No. 69.

In Exhibit No. 70, we have distinguished the convention delegates eligible for national office as the only re-
[fol. 436a] quirement related to prior office-holding and perhaps it could be considered as a type of prior office holding for the national union office. This occurs in unions where the officers are elected at the national union convention and those people who are there as convention delegates then are eligible to run for office and to participate in the election.

[fol. 437]

The Court: Well, I was struck by your answer that being a convention delegate was not holding an office and, literally, or technically, applied, if that is so, then on Exhibit 69 you would not have included convention or assembly delegate as requirements for prior office holding.

The Witness: I stand corrected on that earlier answer, your Honor.

The Court: You have explained that if there were a convention delegate requirement or assembly delegate requirement you would have put it in "prior office holding requirement"?

The Witness: Yes, your Honor.

By Mr. Huntley:

Q Exhibit 70 refers to prior office holding and I assume your definition with respect to that phrase in Exhibit 69 would be the same, if I asked you? A Yes.

Mr. Lurie: If your Honor please, could we get that clarified? Didn't Mr. Skopic say in one he included convention delegates and in the other he didn't?

[fol. 438] The Court: He separated convention delegates out on 70 and on 69 if there were any such he included it in prior office holding.

Mr. Lurie: Which means the definition of prior office holding is not quite the same on the two, just to be clear on the record?

The Witness: Yes, that would be correct, that on Exhibit 70 there is the distinction made of the convention delegates but, otherwise, any other position would be included there as prior office holding.

Q Mr. Skopic, I show you Plaintiff's Exhibit No. 71 for identification and I ask you, sir, if you can identify that (handing). A Yes. This is another table prepared as part of this study on prior office holding.

Q What is the caption of Exhibit No. 71 for identification? A "Prior office holding as a qualification for local union office as provided in national union constitutions and local by-laws governing selected large local unions, May 1965."

Q Would you tell the Court, Mr. Skopic, what you did to arrive at the figures contained in Plaintiff's Exhibit 71 [fol. 439] for identification? A May I see a copy of the exhibit?

Q Yes (handing). A To prepare this table we examined the by-laws of 66 large local unions. The 66 local unions were selected on the basis of total receipts in 1964. Since union member figures are not reported under the Labor Management Reporting and Disclosure Act, total receipts was chosen as an indication of union size. We examined the by-laws of all local unions reporting one million dollars or more total receipts in 1964. This includes hotel and restaurant employees Local 6, which reported total receipts in 1964 of slightly more than $2 million.

Mr. Huntley: I will offer it.

Mr. Cohn: Objected to on the same ground.

The Court: Same ruling. Mark it, Mr. Clerk.

(Plaintiff's Exhibit 71 was received in evidence.)

The Court: I must have misunderstood you, Mr. Skopic, but didn't you just say that the number of members of unions is not required to be reported?

The Witness: That is correct, your Honor.

[fol. 440]

The Court: But if the number of members are not reported, how did you in these other two exhibits, 69 and 70, list the number of members?

The Witness: The membership figures were obtained from the Bureau of Labor Statistics Directory of National and International Unions, which is compiled on the basis of a questionnaire sent to national unions. This lists national union membership, whereas Exhibit No. 71 is referring to local unions.

The Court: But Exhibit 69 is referring to local unions.

The Witness: Those membership figures were obtained from the union's publication, their convention proceedings, wherein the membership of all the locals is listed.

The Court: I see. I'm sorry. Your footnote shows that.

And in 70 the number of members is obtained from this directory. In 71 why couldn't you go to the same directory and get the information?

The Witness: Because 71 contains local unions. The [fol. 441] directory only gives membership figures for national unions.

The Court: I understand. It would have been a very big job to go looking for the convention proceedings or the union publications in all these different fields?

The Witness: That's right. In certain instances we did go to the convention proceedings to estimate local union membership.

Mr. Huntley: Would you read the last question back, Mr. Reporter?

(Question read.)

Mr. Huntley: Your Honor, again I would like to pass up a copy of Exhibit 71 so that you may follow the testimony (handing).

By Mr. Huntley:

Q Mr. Skopic, I believe you testified you studied the constitutions of the various unions listed in the first column of Exhibit 71. A Yes.

Q Would you tell us whether or not those constitutions were in effect in May of 1965? A Yes. These were the constitutions and by-laws in effect as of May 1965.

Q Mr. Skopic, what was your finding, based on the

[fol. 442] study reflected on Exhibit 71? A We found that seven of the 66 locals have a prior office holding requirement. Six of these locals are affiliated with the Ladies Garment Workers Union and they operate under this requirement because it is imposed in the national union constitution. These six locals do not have their own local union by-laws, they are governed solely by the national union constitution. The seventh local with this requirement is Local 6. The requirement is imposed in Local 6's by-laws. It is not contained in the national union constitution.

Q I show you what has been marked as Plaintiff's Exhibit 72 for identification. May I ask you, sir, if you can identify that? A Yes. This is another table which was prepared in connection with the prior office holding study.

Q What is the caption of that exhibit, that exhibit being No. 72? A Prior Officeholding as a qualification for local union office as provided in national union constitutions, May 1965."

Q How did you conduct the study which gave rise to [fol. 443] Plaintiff's Exhibit 72 for identification? A We examined the constitutions of all national unions having more than 40,000 members, according to the Bureau of Labor Statistics directory and having one or more local unions reporting under the Labor Management Reporting and Disclosure Act.

Q How many columns are there in Plaintiff's Exhibit 72 for identification? A Five columns.

Q Directing your attention, Mr. Skopic, to the fourth column, do you find the words "LM-1 Reports" appearing thereon? A Yes.

Mr. Huntley: At this time, your Honor, I will offer Plaintiff's Exhibit 72 for identification in evidence.

Mr. Cohn: Same objection.

The Court: Same ruling.

(Plaintiff's Exhibit 72 was received in evidence.)

Mr. Huntley: Again, your Honor, for the convenience of the Court, I would like to pass up a copy of that exhibit (handing).

Q Mr. Skopic, directing your attention to the fourth [fol. 444] column, where we find "LM-1 Reports," would you tell us what that means, if you know? A Yes. Each labor organization is required to file an initial labor organization information report when it becomes subject to the Labor Management Reporting and Disclosure Act. The number of this form is LM-1 report and this is listed here for abbreviation.

Q What was the total number of unions you studied, as reflected in Exhibit 72? A We studied 72 national unions. These national unions have approximately 40,000 local unions affiliated with them.

Q Would you tell us whether or not the constitutions you studied were in effect in May of 1965? A Yes. The constitutions examined were those in effect as of May 1965.

Q Will you tell us what the result or what your finding was with respect to this study? A We found that only one of the 72 national unions imposes a prior office-holding requirement on its locals for eligibility to local union office. That national union is the Ladies Garment Workers.

* * * *

[fol. 445] * * *

Cross-examination by Mr. Cohn:

* * * *

[fol. 454] * * *

Q Mr. Skopic, you told us that there are some 40,000 [fol. 455] local unions affiliated with the international unions that you list on Chart 71. Am I correct about that? A Yes, sir. Some 40,000 that are filing reports with the Department of Labor.

Q There may be more than 40,000, is that right? A Yes. For example, the Automobile Workers undoubtedly have more locals because certain of their locals are located in Canada, but they do not file reports to the United States Department of Labor.

Q Let's take the figure of 40,000 as a satisfactory figure. Now, how many local union by-laws did you study

of the 40,000? A 125 locals of the Hotel and Restaurant Employees and 66 others, so that would be—

Q Roughly 200 out of 40,000? A Roughly 200.

Q Out of 40,000? A Yes.

Q Now, you also gave us a list of international unions that you studied that don't have a requirement in the international constitution for past service as a qualifica-
[fol. 456] tion for office, did you not? A Would you repeat that, please?

Mr. Cohn: Read that, please.

(Question read.)

A Yes.

Q And you found only one national constitution that has a specific requirement for past service in office; as a qualification for office-holding in a local, is that true? A That's correct.

Q And you listed among those that do not have any national constitution the Hotel and Restaurant International? A That is correct.

Q And yet you find from your own chart that approximately a minimum of one-third of the members of that International union are covered by local by-laws which require past service in office as a requirement for future office-holding, is that not true? A Approximately one-third of the members of the 125 locals that we studied, yes.

Q Right? A Have such requirement in their local by-laws.

Q Right. Even though the national constitution does not require any past service credit; am I correct about
[fol. 457] that? A That is correct.

Q So that you are not in a position to tell this Court on the basis of any studies that you made how many union members in the United States are covered by the 39,800 local sets of by-laws that you have not looked into by requirements for past office service as a prerequisite to the continued office service, is that true? A That is correct.

* * * *

[fol. 464] * * *

Mr. Kushner: Your Honor, may I inquire of Mr. Lurie whether he will stipulate that on Defendant's Exhibit A, which is the list of some 1855 members whom defendant claimed had prior service and are still members of Local 6, that no determination was made by defendant as to which of these persons listed on Exhibit A had two years continuous good standing immediately preceding the 1965 election?

Mr. Lurie: Well, I will stipulate that, subject to this understanding: That all of those had at least two years or more membership in the union. Whether or not they were in continuous good standing or not is the one thing that will require a check.

Mr. Kushner: Fine. I am grateful for that stipulation, your Honor.

* * * *

[fol. 491] * * *

The Court: Mr. Cohn, before you go on, I think perhaps I ought to rule on the point that Mr. Kushner brought up, in effect, asking me to permit it to be litigated here at this trial the issues which were eliminated by Judge McLean's order in striking the several para-[fol. 492] graphs of the complaint.

The government, as you know, submitted a very careful brief with a number of citations, a brief very well done. I have read all, or nearly all, of the cases cited for the secretary to cause me to reexamine Judge McLean's July 15, 1966 order, but I don't find in any of those cases any decision which supports the contention of the secretary.

There are some decisions on which Mr. Kushner relies, that if three members of the union complain to the union about violations, let us say, A, B, and C, respectively, and if thereafter one member of the union, let's say the union member who complained of violation A, makes a complaint to the secretary, then the secretary in an action such as this may rely on and litigate the violations complained of by all three union members to the union.

So that in that case the secretary, and in the decisions Mr. Kushner cites—the secretary could charge in his complaint violations A, B and C, although only one member who had complained to the union about violation A complained to the secretary. But I have not found any decision which says that when a union member who has [fol. 493] complained to the union about violation A then complains to the secretary the secretary may include in his complaint violation D, about which no union member complained to the union and whether those decisions be right or wrong, they seem to go only as far as I have indicated and not to go as far as I would be required to go in order to reexamine Judge McLean's decision and permit the other issues to be litigated here.

Judge Port's decision, in the Northern District, I must say I am not able really clearly to understand, nor am I able to read into anything said by our Court of Appeals any implication that our Court of Appeals had rejected or would reject the principle in the 10th Circuit decision, and, of course, the 10th Circuit decision came down after the opinions of our Court of Appeals had been issued.

So that under these circumstances I feel that I ought not to reexamine Judge McLean's order and, therefore, Mr. Kushner, I feel that I will have to continue to let your offer of proof stand as such and not consider those issues in this trial.

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[fol. 494] * * *

JAMES MARLEY:

Direct Examination by Mr. Cohn:

Q Mr. Marley, you have been previously sworn as a witness in this case and you have told us you are the president of Local 6. I think you have also told us for the last 15 years or so you have been part of the administration officeholding group either in the capacity of secretary-treasurer, general organizer or president; is that not so? A That is correct.

Q Can you tell the court the scope and duties that a president of Local 6 has and the obligations of the presi-

dent and the general officers to its members? A Well, the scope of the president and, as a matter of fact, of the general officers is very wide. First, going into the office of president, he is involved in the signing of contracts—negotiating and signing contracts in 58 membership clubs, private membership clubs.

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[fol. 495] * * *

Q You have contracts with all of the major clubs [fol. 496] in the City of New York and your members work in those clubs? A Yes, and with the hotels, of course.

Q With the hotels, are there any hotels in New York City that you can think of that are not under contract with Local 6 through its affiliation— A If you looked up the telephone book you would find hotels that are not under contract to Local 6, but as a matter of fact they are not hotels, they are rooming houses; I think there is one hotel that we do not have.

Q Which hotel is that? A I think it's the Beekman. That is the only one.

Q But all the other hotels, such as the Plaza, the Sherry Netherlands, the Pierre, the Waldorf, etc.— A All of them, yes, sir. We have the most highly organized hotel union in the United States. I suppose that would cover the world.

Q Those contracts were all signed through the New York Hotel Trades Council? A All of the hotel contracts were, yes. The club contracts are signed directly by Local 6.

[fol. 497]

Q Can you tell us what proportion of the membership of the New York Hotel Trades Council are Local 6 members? A Somewhere in the vicinity of 65 per cent.

Q These contracts with the hotels and with the clubs provide, do they not, for the establishment and creation of certain funds? A They do.

Q Will you tell us which funds are provided for under contract? A In the hotel contract there is a

pension fund, there is the family medical fund, and there is the insurance fund. Officers of Local 6 serve as trustees on all of these funds.

Q These funds— A If I may, in the clubs there is the club employees pension fund. I am the secretary of that. There is the Local 6 insurance fund which covers club workers for medical benefits, and officers of Local 6, including myself, serve as trustees in that fund.

Q Can you tell us in addition to the medical fund are Local 6 members covered by a hospital family plan? [fol. 498] A Yes.

Q In addition to their medical fund plan? A All Local 6 members are covered with a complete family medical plan. In the case of the hotel workers, they are covered through a medical center—at least one and sometimes two in the four boroughs we cover and this medical center provides complete medical care at the center or at their homes with their choice of doctors through that medical center for the member himself and for all of the family.

Q So that Local 6 provides pensions, insurance, medical plans for the members, medical plans for the family and hospital plans for the members and their families as part of its obligations to its members? A This is only part of it.

Q But do they provide those? A They provide all of those things, yes.

The Court: In the pension funds and hospital funds to which you have referred, is it a separate fund for each hotel?

The Witness: No, sir.

[fol. 499] The Court: There is one that covers the whole hotel—

The Witness: There is one fund that covers the whole hotel group. For the clubs there is one fund that covers all the clubs.

Q Each of these funds are administered by joint trustees representing industry and the union? A That is correct.

Q And there is an impartial chairman over these funds who is generally the impartial chairman in the

indutry? A In the hotels, that is correct. In the clubs, if any matter came up, it would go to the American Arbitration Association, I believe.

Q How long have these various funds that you have just referred to been in existence? A I would say they start—the pension fund in the hotels starts around 1952. The medical fund goes further back than that. I don't have the exact date, but I could get it for you.

Q Do you know of your own knowledge whether Local 6 was the first hotel union in the country to gain these benefits for its members through collective bargaining? [fol. 500] A I know of my own knowledge that Local 6 was the first union in the country to get these benefits through collective bargaining.

Q In the hotel field? A In the hotel field.

Q Since then other local unions have accomplished the same results for their members, have they not? A Yes, sir. We lead, others follow.

Q Can you describe for the court the system adopted by Local 6 for protecting its members against grievances —for handling the grievances of its members in the hotels? A The system—

Q The system adopted by Local 6 for the handling of grievances. A When a member is agrieved, if it has to do with his particular job—

Q Talk to the judge, please.

The Court: You don't have to look at me, Mr. Marley. No, no, you can look at counsel.

Mr. Cohn: That might be an unwise choice on his part.

The Court: I can hear perfectly well. Mr. Marley, you [fol. 501] look in whatever direction you are most comfortable. I can hear perfectly.

The Witness: Thank you very much, sir.

A When a member is aggrieved in the hotel or feels he is aggrieved, there is in that particular unit in which he works a delegate to whom he takes this grievance. The delegate at that stage could take it up with the head of that particular department and usually does. It might not be the head of the whole department; it might be a superwisor. If it can be settled at that stage of the game, then it is settled.

However, if it is not settled, then the delegate will report this to the business agent. The business agent will then endeavor to settle the problem with the head of the department. In the event that fails, he then can go to the personnel department or, in some hotels, to top management; sometimes with the shop committee or sometimes with the delegate and the aggrieved member and try to solve it there.

However, after all the efforts have been exhausted within the hotel and the grievance still stands and the business agent and the delegate feel it is a just grievance, the [fol. 502] matter can then go for mediation to the hotel association, before the labor management, and there the member will be represented by union counsel in an effort to settle the grievance.

If the grievance is not settled at that particular stage, the last and final step is taken, and that is that it goes before the impartial chairman, the arbitrator, whose decision is final and binding. There again the member is represented by counsel for the union and by his union officer and the impartial chaiman then makes a decision.

* * * *

[fol. 503]

Q Does the member have the right to decide whether his grievance will go all the way up to the impartial chairman, through the union machinery? A He would not have the right to decide that it should go up there. He might have a case that the union grievance board felt that if it went to get a decision might do damage to other cases that might follow. However, in most cases —in fact in all cases that I know of, if the union member insists that he wants arbitration, even though it is a weak case, he will be able to go to arbitration.

Q So that while theoretically the union machinery might refuse to process a grievance all the way through the impartial chairman, can you tell us whether in your experience of many years of leadership in the union do you know of any case where you had failed to take a grievance all the way up to the impartial chairman? A [fol. 504] I know of no case where the member insisted.

There may have been cases where the union advised the member that he had a weak case and the member may have agreed. But in most instances members don't think they have a weak case and therefore insist that it go to arbitration.

Q You have mentioned the impartial chairman. Do you know how many years ago the impartial machinery was set up in the hotel industry? A Oh, very early in the life of the union. As a matter of fact, I think it is almost from the beginning of the union. The first impartial chairman was the former police commissioner, Edward P. Mulrooney.

Q He was impartial chairman for about 20 years? A He served with distinction, yes.

Q Upon Commissioner Mulrooney's death, who succeeded him? A A Professor Herman Grey.

Q A professor of law at N.Y.U.? A Yes, sir.

Q And he retired when? A Around January 7 or 8, I believe.

[fol. 505]

Q So that the industry has been governed by the same impartial chairman—withdraw the question.

So that in the last 27 years the industry and the union have functioned under two impartial chairmen? A That is correct.

Q Do you know whether in this industry in the last 27 years of its existence there has been any widespread strike of the members against the hotels or any authorized strike of the members against the hotels? A There has been no authorized or widespread strikes. There have been sporadic stoppages in an individual hotel, but no strike. It has been a very peaceful situation from which I think both sides have gained a great deal.

Q Your local union has been able to give its members continued employment without the customary labor stoppage and the customary labor strike that accompanies our normal collective bargaining processes, is that right? A That is correct.

The Court: Mr. Cohn, I am taking this evidence, of [fol. 506] course, for its bearing on the question of the

value of experience to a person who holds the office, but I am sure you agree with me that my job here is not to decide whether Local 6 has actually done a good job or not.

Mr. Cohn: I wouldn't say—

The Court: I can't see that that really has anything to do with this issue. It could have done a most magnificent job—I might even be willing to assume so—but I don't think it would affect the question of law of whether this is a reasonable qualification or not.

Mr. Cohn: Judge, it affects this aspect of the case, and I think this is as good a time to state it as any. If one reads the government's brief, the government's argument is (a) that the restrictions are unreasonable and (b) there is an inuendo throughout the entire government brief that the reason for the adoption of these rules is to keep a—is to have such restrictions in the bylaws that the group in power can perpetuate itself in office and that the reason, argues the government, why the administration has constantly been elected overwhelmingly—sometimes with a white ballot and sometimes [fol. 507] by a vote of eight or 10 to one, is because of restrictive structure. It is our contention that the alleged restrictive structure is a reasonable one, but even if the court were to find that in its opinion it is not a reasonable one, that the nature of the bylaws has nothing at all to do with why this group is reelected over and over again by such overwhelming majorities; that the reason this group is elected as it has been is because of the tremendous service it has given to its members.

The Court: You are telling me on the separate issue whether the violations, let's say, if one be found to exist, may have affected the result—

Mr. Cohn: All right.

The Court: I will continue to let you develop that.

Mr. Cohn: Thank you, Judge.

I think our last bit of dialogue, to use the current phrase, revolved around the question of fact that the union has been able to supply its members with steady work for a period of some 27 years.

Q Is that right, Mr. Marley? A Yes, sir.

* * * * *

[fol. 508]

Q Do you know whether the New York Hotel Trades Council Local 6 pattern and the industry pattern in New York have become the models for other large industries in the hotel industry? A They have. Local 6 and the Hotel Trades Council is looked up to by every hotel union in the country. The reason for that is that we enjoy the highest conditions of any hotel union in the country.

Q Can you tell us what other function the union maintains in order to service the interest of its members than those which have already been mentioned? A This is not a narrow union hall where people come and get their books stamped and go away; this union [fol. 509] extends out into the community. I don't know if you know that.

Q Do you maintain a social service department? A We maintain a social service department within the union but more than that, we maintain neighborhood service councils in Brooklyn, the Bronx, Queens and Manhattan where a member and his family may go. As a matter of fact, starting next month every member of Local 6 will be able in his own community to go and have his income tax forms filled out by a certified public accountant to do away with these storefront places who were filling out our members' income taxes, charging them an enormous sum to fill them out on the basis of getting them their return, and their return was usually illegal and the member got in trouble. We now provide certified public accountants for our members for income tax.

For the children—

Q Let me bring it out by question and answer. What kind of problems, social problems, confront your members which are handled through the neighborhood service councils? A Any member with a problem having to do with [fol. 510] rent, landlord, garnishee—you name it and we are equipped in the neighborhood service councils to take care of it.

Q Let's take the garnishee problem, for example. What situation did you find plagued the Local 6 members with respect to their garnishee problems and what did the

local union do about it? A The problem of garnishees first is that we have members who are not fully conversant in English, although it doesn't apply only to them, with slick salesmen selling them goods, getting them to sign for the goods and ending up with a garnishee and immediately the garnishee was placed there even though the law, we maintained at that time, required the employer to deduct the amount from the wages, the employer fired the member and the member was on the street.

What did we do about it? What we did is we went and changed that law on garnishees—

Q You mean you called it to the attention of the state legislature and carried on a campaign among your members to get the legislature to change the law? A Calling it to the attention of the legislature is putting it [fol. 511] mildly. We carried on a campaign, our members went to Albany and we got the garnishee bill passed.

Q Did it get the governor and attorney general of the state to back your legislative plan for this? A We certainly did.

Q Earlier in your testimony you had made some reference—not in the testimony given today but in the testimony while you were on cross-examination—you made some reference to the tax problem confronting the waiters and their social security problems with respect to tipping. A I did.

Q And you said that the assembly had been instrumental in getting the law changed on that. Can you tell us specifically what that situation was and what Local 6 did about it? A Since the beginning of the social security program the tipping worker in the United States, and we have a great many of them because our hotels and the dining rooms are all tipping workers—the bulk of his wages came from tips, his living came from tips and his [fol. 512] wages were low but he had to pay withholding tax on both wages and tips but was not provided with any social security insofar as tips are concerned, and the result was that when he retired he got the very lowest payment of social security eventhough he was declaring to the government an income and paying taxes on an income much higher. This was an injustice.

All waiters have fought against this thing, the union had fought against this thing. This was a matter of countless hours and months of debate and of trying to get this law changed and finally we were able, the first time in the country—we were able to write into our contract and get agreement from the Internal Revenue Service that they would consider that a waiter whose wages were $35, that they would consider and agree that that waiter received another $35 in tips and that social security should be paid on that.

Q In order to get the IRS and the Secretary of Health, Education & Welfare to go along with this, did you have any conferences of your Local 6 members in Washington? [fol. 513] A We did have a rather large conference in Washington.

Q How large? A I believe it might be a couple of hundred people from that particular department and other people.

Q Whom did you meet with in Washington before the social security board changed its ruling and the IRS changed its ruling? A I believe Mr. Ball.

Q What governmental officials aside from the officials of the social security board and IRS, Congressmen, Senators, and so forth? A We met with the New York Senators, we met with the Congressmen from New York and we were able to set up the conference there. As a matter of fact, Senator Javits appeared at that conference—no, his representative appeared at that conference and Senator Keating—

Q Yes. Now Judge Keating. A He appeared and spoke very strongly against injustice.

Q And you had a number of Congressmen, about 20 or 30 Congressmen? A Yes, sir.

[fol. 514]

Q Did the union maintain a scholarship plan? A Local 6 has an excellant scholarship plan, yes.

Q How long has that plan been in existence? A Since 1954.

Q Who are eligible for scholarships under your Local 6 scholarship plan and will you describe it for the court?

A The scholarship plan is set up for children of members of Local 6 and all members' children—I have forgotten the exact qualifications there, who have been in good standing for a certain number of months, are eligible to apply for this scholarship. It is not only one scholarship; it varies from time to time, but never goes below three. There is one scholarship for $4,000 and there are two scholarships for $2,000. The applications are sent to the member who makes the request and these go to Dean Cole, of Lafayette University.

Q He used to be Dean of Columbia? A That is correct.

Mr. Kushner: If your Honor please, Dean Cole was an assistant dean in charge of students at Columbia, [fol. 515] just for the record.

Mr. Cohn: A friend of yours, Mr. Kushner?

Mr. Kushner: No, sir. I hate to hear him represented as the dean because I am very fond of the person who was the dean.

A We referred to him as Dean Cole, with regard to whatever university he is at.

Q He handles this? A Yes, and then there is a panel of judges who sit in their and take into consideration all of the factors. This scholarship is a very good scholarship.

Q In addition to the scholarship fund, do you have any educational advisory service for the children of members of Local 6? A Yes. Once each year children who are about to enter college or want to enter college—I think it is in their third year of high school—we have counseling services, where there is a meeting held, usually on a Saturday, and these educators appear, again under the auspices of Charles Cole of Lafayette, who brings in other personnel from other colleges and the member's [fol. 516] children are advised about the best way to get into colleges, scholarships to apply for, and so forth.

Q Would you say that it is your concept of the functions of trade union leadership to integrate its members into the life of the community in which they live? A I would say so, yes, sir.

Q And that your obligations go beyond the collective bargaining obligations only? A In our trade union our obligations go far beyond the collective bargaining part of it.

* * * *

[fol. 517]

Q Mr. Marley, do you know of your own knowledge whether every officer of the union, beginning with business agent and going up through president, is a graduate of the hotel industry, comes up from the shop? A All officers from the business agent up to the president either come out of a hotel or a club, right from the industry.

Q Mr. Marley, your bylaws have a provision in them with respect to the question of amendments, do they not? A Yes, sir.

Q Are you familiar with the amendment process? A Yes, I am.

Q Can you tell the court what the amendment procedure is in your union?

* * * *

[fol. 518] A There are two ways of amending the bylaws: any member who wishes to propose an amendment to the bylaws would have to make that proposal to the secretary-treasurer of the union and that proposal would have to come before the assembly. It would have to be read at the first meeting of the assembly, it would have to be read at a second meeting of the assembly and it would have to be acted upon at the third meeting of the assembly after due notice had been given to the members. This is where an ordinary member who wished to amend a bylaw could do so.

The administrative board may propose amendments to the bylaws at a constitutional meeting. It is quite simple [fol. 519] to have them amended just by writing in.

Q Have the bylaws in fact been amended from time to time since the organization of the union? A Yes, they have.

Q Do you know whether any set of amendments has ever been submitted by the so-called membership party or by the complainants in the procedure before the Sec-

retary of Labor by any other member in which they sought to amend the section of the bylaws which sets forth the qualifications for officers?

* * * *

[fol. 520] * * * A During my term as secretary-treasurer to my own knowledge I have never seen a proposal to amend the bylaws in the manner that you suggested.

Q That is, to remove the prior qualification? A To remove the prior qualification.

Q Have the by-laws in effect been amended since the institution of this suit by the union so as to remove the prior qualifications for office?

Mr. Kushner: Your Honor, I object on several grounds. First of all, it is leading. Second of all, the [fol. 521] question is entirely irrelevant, and this is my main ground. I think anything that has happened after the initiation of this lawsuit where the union may or may not have altered its by-laws on the grounds that we have objected to them is irrelevant on this lawsuit.

Mr. Cohn: May I be heard on that?

The Court: No, because I am going to take it. I would agree with Mr. Kushner that the election of May, 1965 is governed entirely by the by-laws which were then in force, but it might be that in some way not immediately apparent to me this might be relevant on the question of whether the old by-law is reasonable or not. You are quite right, it is not going to make any difference, it is not going to make the action moot, even if they removed the provision entirely.

I will take the evidence.

Mr. Cohn: Thank you.

Q I show you this paper writing and ask you whether this is the provision of Section 7(a) of the by-laws which the union has adopted as its by-laws and which has been approved by the general president in due course. A [fol. 522] This is the section that has been amended, yes.

Mr. Cohn: May I offer this in evidence as the defendant's exhibit next in order.

The Court: All right.

Mr. Cohn: Judge, would you like to look at a copy?
The Court: Yes.
Mr. Cohn: There are other amendments but this is the only one that deals with the election procedure in any way, shape or form. The others are administrative amendments having nothing at all to do with the questions at issue (handing to the Court).
Mr. Kushner: May I examine briefly on the voir dire, your Honor?
The Court: Yes, on the question of whether—having to do with the authenticity of the paper?
Mr. Kushner: Having to do with whether this amendment has become effective, your Honor.
The Court: Yes.

Voir Dire Examination by Mr. Kushner:

Q When did the general president of your interna-
[fol. 523] tional union approve this amendment, Mr. Marley? A This month. Probably eight days ago, I suppose.
Q Did he send you a letter approving it? A Yes, sir.
Q Have you got that letter in the courtroom here? A No.
Mr. Cohn: We will furnish it to you. First we got the approval by telephone and then—
A We have the letter. They are approved.
Q Pardon? A That is approved, along with the other things.
Q Who approved this by-law amendment in behalf of Local 6? A The assembly, at a constitutional meeting.
Q When was that meeting held? A I believe I have the date here. It was held in December.
Mr. Leibowitz: The 6th.
A The 6th of December.
[fol. 524] Q Of 1966? A That's correct.
Q Did the assembly pass upon this proposed amendment at two meetings prior to the December 6th meeting? A This was a constitutional meeting, sir.
Q So there was no need— A There was no need for three readings.
Q Who prepared this amendment? A The administrative board.

Q Upon advice of counsel, I assume?

Mr. Cohn: With the advice of counsel.

A With the advice of counsel.

Mr. Kushner: Your Honor, I object to the introduction of the exhibit on the same grounds as I objected to the question with regard to whether the by-laws had been amended and that is that anything subsequent to this lawsuit to me is entirely irrelevant.

The Court: Well, I am going to take it, although I am not sure, Mr. Kushner, you ought even to object to it because this strikes me as something on the order of repairing a sidewalk after the accident has happened.

Mr. Kushner: Your Honor, I couldn't agree with you [fol. 525] more.

The Court: I am not sure that I comprehend why it is being offered but, nevertheless, it is and I am going to take it.

Mr. Cohn: In view of your Honor's remark and instinctive reaction to it, I would like to call these facts to your Honor's attention: we had these by-laws amended because a trade union such as Local 6 is a living, dynamic organization. It is not an organization which regarded its laws as unchangeable, as the laws of the Medes and the Persians. When we are confronted with a situation where we recognize that there will constantly be a problem arising as to whether we will have a large enough pool of people to run for office because of the changing years and changing times, then we sit down and figure out what is in the best interests of the members of the union. We put the problem to them very squarely with our recommendations and let them act upon it. We don't act in secret. We put this in as part of the record.

This is a living, growing organization. We will change our laws many times in the next 25 years, just as we have in the past 25 years.

[fol. 526]

The Court: I will overrule Mr. Kushner's objection. Mark it.

(Defendant's Exhibit D was received in evidence.)

The Court: This became effective, Mr. Marley, when do you say, when it was approved by the general president?

Mr. Cohn: Just last week.

The Witness: Yes, sometime last week he made the final approval, but it was passed in December.

By Mr. Cohn:

Q Are you familiar with the number of elections held since 1951 in Local 6? A Yes.

Q Since 1951? A Yes.

Q 1951 was the year in which there was a hot contest, was there not— A Yes, it was a very difficult election, a hotly contested election, yes.

Q And there were three slates that ran for office at that time?

[fol. 527] Mr. Kushner: Objection, your Honor, leading question.

Mr. Cohn: I think this has already been testified to.

The Court: I sustain the objection as to form.

Q Do you know whether there was more than one slate offered to the membership? 1951. A Yes, there were.

Q How many were offered? A I believe there were three.

Q Was there an administration party slate? A There was.

Q Do you recall the number of voters eligible to vote in the 1951 election? If you need some help on that, I have a table prepared.

Mr. Kushner: I object. The best evidence of that is the official membership roster of that year. I don't think that Mr. Marley's memory is even adequate secondary evidence.

Mr. Cohn: We are being very technical. I am trying to get a pattern of the number of people eligible to vote from 1951 on.

The Court: I will permit it and overrule the objection [fol. 528] but Mr. Kushner will be allowed to cross-examine and we may get into this on cross-examination.

Mr. Cohn: Fine.

Q Did you have your union prepare, under your supervision, a chart which would show the elections which were held every election period since 1951 and which would reflect the total membership of the union and the total number of votes cast in each election? A Yes.

Q I now hand you this paper writing and ask you whether this is the chart that you had prepared. A Yes.

Q You obtained those figures and the chart was prepared by your staff, is that right? A Yes.

Mr. Cohn: I now offer this in evidence as defendant's exhibit next in order so that I can have it before the witness and question him on it.

* * * *

[fol. 529] * * *

(Defendant's Exhibit E was received in evidence.)

* * * *

[fol. 530] * * *

By Mr. Cohn:

Q I show you Defendant's Exhibit E and ask you whether there was more than one slate of candidates in the 1951 election. A Yes, there was more. There were three slates.

Q How many people were eligible to vote in the 1951 election?

* * * *

A The chart shows at the 1951 election there was an eligible membership of 26,630.

[fol. 531]

Q And how many voted in that election? A 12,705.

Q 12,700 out of 26,000? A 26,000.

Q There were three slates running? A Yes.

Q Will you read the figures in the next election? A 1954, eligible membership, 25,678.

Q How many voted? A 14,618.

Q So you had in the 1954 election roughly 14,000 out of 25,000? A Yes.

Q How many slates ran in the 1954 election? A I don't know. Probably two, but I don't know. I would have to check that.

Q Let's get on to the next election. When was that? A 1956.

Q What was the eligible number of voters? A 26,489.

[fol. 532] Q How many voting? A That was a white ballot, I believe.

Q There was no opposition at all? A There was no opposition then.

Q Was there an election held that year? When you say it was a white ballot, did the members come out to vote at the time of a white ballot? A No, I don't think so. I don't believe so.

The Court: Do you mean there was no election in 1956?

Mr. Cohn: There may have been no opposition at all and they were elected by a white ballot.

Mr. Lurie: Look at the footnote, please.

Q Look at the footnote and read it to the Court. A "In 1956 the election and objections committee recommended to the executive board and the executive board approved the following:

> "Because there is no contest in any department except the banquet department and taking into consideration the 1955 negotiations and the fact that in February of this year almost 15,000 members voted in a convention election, the committee recommends

[fol. 533] the following for your approval:

> "That balloting shall take place only for the banquet department which is the only department having a contest."

So that in that year there was only voting in the banquet department.

Q What was the next election? A 1959.

Q 1959? A Yes, '59.

[fol. 534]

Q How many were eligible to vote in the 1959 election? A 26,974.

Q How many people voted? A 11,214.

Q How many slates ran in the 1959 election? A I believe it was two.

Q When was your next election? A 1962.

Q How many voters were eligible at that time? A 26,340.

Q And how many voted? A 7,131.

Q And how many slates were there? A I believe there were two. The other slate may not have been a full slate.

Q When was your next election? A 1965.

Q Give us the figures then and the number of slates. A 27,354, and the votes cast were 11,254.

Q So that, roughly, in all of the elections held since 1951, including the most hotly contested election which [fol. 535] took place fifteen year ago and the most recent election, you get about the same percentage of voters turning out when there is an election?

Mr. Kushner: I object, your Honor. That is not a fair characterization of this chart and indeed anyone can perform the necessary computations.

The Court: I agree, but I will permit it. If it is a mistake, I can tell it when I look at the chart.

A Yes, it averages out to about 11,000 over that period.

Q Coming to the 1965 election, do you recall whether or not you had a meeting in the office of the union with Mr. Quara, who has testified before this Court? A That was prior to the 1965 election.

Q How soon prior? A It was prior to nominations.

* * * *

[fol. 536] * * *

Q Was the subject of that a discussion of the then forthcoming elections? A Yes, sir.

Q Was Mr. Quara a candidate or a proposed candi- [fol. 537] date on the membership party slate to run against the administration? A Not at that time, sir.

Q Did he say anything at all about his intention to run for office?

The Court: Wait. Who was present?

Q Who was present beside yourself? A Myself and Mr. Quara. He visited me in my office.

The Court: Nobody else but you two?

The Witness: No one else, your Honor.

The Court: You can't fix it any more definitely as to time except that it was in the few weeks before the 1965 election?

The Witness: That's correct, your Honor.

The Court: I will overrule the secretary's objection.

Q Can you tell us what Mr. Quara asked you at that time and what you replied and what you told him and what took place at that meeting? A Mr. Quara came to see me and represented that he was the head of the membership party and said that the membership party was putting candidates up for nomination and putting [fol. 538] candidates up for election and he hoped that it would be a clean campaign, that there would be no muck-raking and that we would act like gentlemen and have a gentlemanly campaign.

I replied that we always ran a gentlemanly campaign and he had a right to put up any candidates he wished and would be treated as fairly as anybody else in the union, he and his candidates.

Q Did he ask you to supply any information which would make it possible for him to run his slate of candidates? A No, sir.

Q Did you make any offer to him to give him any assistance that he might need in his campaign? A I told Mr. Quara that whatever information was available to the union and that he would require and he was allowed, the same as the administration party, he would get equal treatment and didn't have to worry about that at all—anything he was entitled to and we had he would get, the same as the administration party and exactly on the same basis.

Q Did, in fact, the membership party run a group of candidates for office in the 1965 election? A They did.

Q Can you give me the names of the four candidates [fol. 539] whom they attempted to run for general officers? A That they attempted to run?

Q Yes. A For president, I belitve it was Anthony Carballo.

Q Do you know whether, in fact, he actually appeared on the ballot and did run for the office of president? A Of course he appeared. He ran as president, Mr. Cohn.

Q Who else did they attempt to run? A There was a nomination, I believe, of Robert Bruce for secretary-treasurer.

Q Was Mr. Bruce disqualified from running by the Election & Objections Committee for the office of secretary-treasurer? A He was.

Q Let's have the third name. A The third name was Mr. Salavarria, who was nominated for general organizer.

Q Did he, in effect, run for general organizer? A Yes, sir, he ran for general organizer.

[fol. 540]

Q And that was the same Mr. Salavarria who had previously been a member of the administration party slate in the 1962 election for the assembly, is that right? A That is correct.

Q Who was the fourth candidate? A Adolphus Mims ran for recording secretary.

Q Was he found disqualified for running for recording secretary? A He was.

Q With respect to Mr. Bruce and—on what grounds were they found disqualified? A Mr. Mims, I believe, was disqualified because he had not been a member of the union long enough.

Q Did Mr. Bruce and Mr. Mims appear on the membership party slate in the 1965 election as candidates for any office? A Yes. Mr. Mims and Mr. Bruce appeared as candidates for convention delegates.

Q The candidates for convention delegates were also chosen to run on party slates? A Thas is correct.

Q And their names appeared on the ballot in the 1965 [fol. 541] election at the same time that the other candi-

dates for office ran, did they not? A You mean Mr. Bruce and Mr. Mims?

Q Yes. A Their names appeared on the ballot.

* * * *

Q These candidates for convention delegate appeared [fol. 542] on a citywide ballot? A Yes. All of the members throughout the City were able to vote for convention delegates. That was a citywide election for convention delegates.

Q So that physically the names of Bruce and Mims and Quara—

Mr. Lurie: Carballo and Salavarria.

Q —Carballo and Salavarria appeared before the membership of Local 6 on a citywide basis? A That is correct, sir.

Q I hand you Plaintiff's Exhibit 34 in evidence and I ask you to read from that the vote that appeared for the membership party's candidate for president. A For the membership party's candidate for president?

Q Yes. A 1,347 votes, according to the Election & Objections Committee computation.

Q Can you show us the vote that Mr. Bruce received as convention delegate? A For convention delegate, Robert Bruce received 1,145.

Q And Mr. Mims' vote for convention delegate was [fol. 543] how much? A 1,097.

Q And Mr. Carballo's vote for International delegate was how much? A 1,154.

Q What was Mr. Carballo's vote for general officer? A 1,347.

* * * *

[fol. 544] * * *

Mr. Lurie: If your Honor please, I think we can agree to the following facts: that nine of the proposed candidates—

The Court: How many were the total number of candates proposed by the membership party for every- [fol. 545] thing?

Mr. Lurie: There were twenty people who were pro-

posed for one or another office, if your Honor please, and some for two offices, but twenty different names.

The Court: The total number of positions to be filled?

Mr. Cohn: Thirty-one.

Mr. Lurie: If your Honor please, there were thirty-one positions for general officer, vice president and business agent and there were ten delegates to the international convention.

The Court: But the total number of positions for which there was a prior office qualification, I understand, was thirty-one?

Mr. Lurie: Yes.

The Court: Now, the membership party apparently did not propose thirty-one names?

Mr. Lurie: No.

The Court: They proposed twenty?

Mr. Lurie: The twenty names include the names that they proposed for international delegate.

The Court: Does that have prior office qualifications?

[fol. 546]

Mr. Lurie: No.

The Court: I am not interested in that then.

Mr. Lurie: The reason we are presenting it to you, sir, is not a question of whether it affects the reasonableness but in terms of affecting the outcome of the election, the fact that people did appear on the ballot and the membership got an opportunity to vote for them would indicate whether or not the disqualification of some of these people affected the outcome.

The Court: The total positions to be filled for which there was prior office qualification was thirty-one?

Mr. Lurie: Yes.

The Court: The total proposed nominees for those thirty-one positions by the membership party were twenty?

Mr. Lurie: No.

Mr. Kushner: No, your Honor, seventeen.

Mr. Lurie: That's right, seventeen.

The Court: Of the seventeen, how many were disqualified?

Mr. Kushner: Your Honor, nine were disqualified for [fol. 547] lack of prior office-holding; four were disqualified for lack of continuous good standing. That left four who ran for general office or for business agent—two of those ran for general officer and the other two ran for the positions of business agent in two separate districts.

The Court: Do you agree, Mr. Lurie?

Mr. Lurie: I agree with those facts. One other fact: there were some six candidates who ran on the membership party slate for delegate to the international convention—no, eight, I am sorry, three of whom were disqualified to run for other office.

Mr. Kushner: Two of the three had been disqualified for lack of prior office-holding, I think you will agree?

Mr. Lurie: Yes.

Mr. Kushner: And the third for lack of continuous good standing?

Mr. Cohn: Bruce and Mims who ran for two of the most important offices—I think we will all concede that the president, general organizer and the secretary-treasurer are the key officers—so they had only two candidates [fol. 548] running for general office, but the two disqualified candidates were eligible to run on a city-wide slate for convention delegate and they achieved the results that were here indicated.

The Court: But Mr. Mims was not disqualified because he didn't have prior office experience; he was disqualified because he had not been a member of the union long enough?

Mr. Cohn: That is correct.

Mr. Kushner: Your Honor, strictly speaking, he was disqualified because he lacked the necessary continuous good standing. It was entirely possible and it did happen in some cases that a man would have filed a withdrawal card from the union although he had long been a union member because he went to work in a restaurant and when he came back in he would lack the continuous good standing.

Mr. Lurie: That was not so in Mr. Mims' case.

* * * *

[fol. 554]

Q Have you recently conducted in Local 6 a referendum on the question of an increase in dues? A Yes, sir.

Q Can you tell us when that referendum was conducted and whether the subject of the referendum was an increase in the dues that the membership would pay to Local 6?

* * * *

A Yes, sir. There was a referendum by secret ballot held on January 11 of this year proposing an increase [fol. 555] in dues to the membership and giving the reasons for that increase, and there was a total vote of approximately 16,000 members, of which approximately 13,000 members voted to increase the dues and 3,000 members voted not to increase the dues.

Q So that out of a present membership of approximately 27,000— A No, sir, the present membership is 25,000.

Q 25,000, and the issue of dues increases, you got approximately 16,000 people voting of whom 13,000 now supported the administration proposal and 3,000 voted against it, is that right?

A Yes. That is correct.

* * * *

Cross-examination by Mr. Kushner:

Q Mr. Marley, I hand you Exhibit 23 for identification and ask you if there was opposition for any paid office in 1962 election and, if so, for which? A No, sir.

Q So your answer is there was no opposition for any [fol. 556] paid office in the 1962 election? A Yes.

Q By "paid office" is it correct that the term includes the four general officers, the vice-presidents and business agents? A That is correct.

Q I hand you Exhibit 22 and ask you if there was opposition for any paid office in the 1959 election. A There was opposition.

Q For which office? A In District 3, for the office of business agent.

Q Any other office? A I'm checking it, sir—in the banquet department.

Q For which office? A For the office of business agent. May I make a quick check again?

Q Yes, please.

(Pause.)

A In the banquet department there was opposition for the office of vice-president and in the banquet department there was opposition for the office of business agent.

[fol. 557]

Q Is it correct, then, that in the 1959 election there was opposition for the following paid offices: Business agent in District 3 and vice-president and business agent in the banquet department? A That is correct.

Q I hand you Exhibit 21, which is the report of the election and objections committee for the 1956 election. Is it correct that in the year 1956 there was an election for paid officers in only one department? A Yes, sir.

Q Let's look at that one department closely in the 1956 election— A Are you talking of the banquet department?

Q Yes. I am referring now to page 7 of Exhibit 21. In that banquet department the paid officers were unopposed, were they not? A Yes.

Q But there was opposition for executive board and for department committee? A That is correct.

Q And is it correct also that the administration party [fol. 558] ran a complete slate both for paid office, executive board and department committee in the banquet department? A Yes, sir.

Q Do you know the reason for that? A The reason for that is that since they were running an election in that department they would run the officers even though there was no opposition. As a matter of fact, in the 1954 election there was no opposition in the whole union and the union ran an extensive election and they did it for the purpose of impressing the employer that we were going into negotiations and we went into all of our newspapers and asked our members to come out even though there

was no opposition to show the empoyer that this union meant business and that the members stood solidly behind the administration in order to obtain better conditions.

Q Let's go back to the banquet department of the 1956 election. Isn't it a fact that the administration party ran a complete slate both for paid office and for the executive board and the banquet department in 1956— A That is correct.

Q Let me complete my question, please. A This was [fol. 559] the only department where there was opposition —where there was an opposition and where it was necessary to have an election.

The Court: Mr. Marley, you are doing more now than answering the question. You remember we agreed that our groundrules were that you answer the question and any explanation Mr. Cohn and Mr. Lurie can bring out.

The Witness: I'm sorry, Judge.

Q In 1956 in the banquet depatment, it wasn't necessary to run the paid officers on the ballot, was it, they were unopposed?

Mr. Cohn: Objective to the form of the question. It is argumentative.

The Court: I will permit it.

Q Would you like the question read back? A No, I understand your question. Your question is that it wasn't necessary to run the paid officers, since they were unopposed?

Q Yes. A I don't know whether it was necessary or not, but I believe it was correct, that since there was a contest in that election in that particular department that it was then correct to run all of the paid officers in the [fol. 560] department along with the executive board and the department committee.

Q Isn't it a fact that the paid officers were put on the ballot in that banquet department in order to help the administration party candidates for department committee and executive board? A Mr. Kushner, it is not a fact and that is not the reason.

Q Tell us once again what the reason was.

Mr. Cohn: I object to that, if your Honor please.

The Court: Sustained.

Q I hand you Exhibit 20 and ask you if there was opposition for any paid officers in the election of 1954. A There was no opposition for paid office in the 1954, and I have already stated the reason there was an election.

Q Mr. Marley, before we go on to another document would you examine the kitchen department, the dining room department, the housekeeping department and the banquet department in the 1954 election and objections committee report. A Do you want to start with the kitchen?

[fol. 561]

Q Start with the one that comes earliest in that report. A Page 2 is the kitchen.

Q Was there opposition? A There was, I beg your pardon, yes.

Q For vice-president of the kitchen department, right? A That is correct.

Q Will you go on, please, to the next department? A There was opposition in the dining room department.

Q For what office? A For vice-president. There was opposition in the banquet department.

Q For what office? A For vice-president and business agent.

Q Was there opposition for any other paid offices? A I will have to start from the beginning, if you will give me a moment to check it.

Q Please do. A I have already mentioned in the kitchen department there was opposition for vice-presi-

[fol. 562] dent, in the dining room department there was opposition for vice-president, in the housekeeping department there was opposition for business agent. I think that covers it.

Q I hand you Exhibit 24A and ask you whether there was any opposition for any paid office in the 1951 election. A There was.

Q For which? A There was opposition for president, opposition for secretary-treasurer, opposition for general organizer, opposition for recording secretary. In the club department there was opposition for vice-president, for business agent. In the bar department there

was opposition for vice-president and opposition for business agent. In the kitchen department there was opposition for president, for business agent—

The Court: Did you say president or vice-president?

The Witness: President. There was opposition in all departments for president, excuse me, your Honor.

A (Continuing) In the kitchen department, opposition [fol. 563] for vice-president, opposition for business agent. In the banquet department there was opposition for vice-president and opposition for business agent. I think that covers it, sir—oh, and the housekeeping department: Opposition for vice-president, opposition for business agents.

Q Does that complete your answer? A Yes. I believe there was opposition in all departments. Did I miss any? In all of the departments except laundry—I believe laundry had no opposition.

Q You mentioned a few moments ago the 1954 election — A I am in error on that. It was not in the 1954 election. It was one election, but I don't know which one.

Q You are in error about what? Which election were you speaking about you said you wanted to get out the vote? A It was not the 1954 election. I don't know the year. I thought it was 1954. Evidently it was not.

Q I show you Exhibit E and ask you it that helps you [fol. 564] in any way (handing). A It could be the 1956 election. It may have been the 1956 election.

Q But you are certain it wasn't the 1954 election? A The 1954 election, I believe we had opposition there.

Q It couldn't have been the 1956 election, could it? You only had an election in one department that year. A Yes, that's right. I know we did have one election where there was no opposition and we asked the membership to come and vote even though there was no opposition in order to make up—it may have been the '54, I don't know.

Q You are not sure which year it was? A No. I could check for you.

Q How could you check it? A By going through the newspapers. May I see the 1954 election and objections committee—

The Court: Are there any papers in the courtroom, Mr. Marley, that you could use to check it?

Mr. Lurie: Some of them are, your Honor.

Mr. Kushner: Your Honor, I am handing Mr. Marley [fol. 565] Exhibits 25, 48 and 25A, all of which are newspapers which deal with the 1954 election.

The Court: I am sure you wouldn't have objection to Mr. Marley calling for any other documents?

Mr. Kushner: No, your Honor, not at all.

(Pause.)

The Witness: If your Honor please, I would like to see the election and objections committee report for the 1954 election again.

The Court: All right.

Mr. Kushner: I am handing Mr. Marley Exhibit 20, which is the report he just referred to.

(Pause.)

Q Mr. Marley, if you don't recall which year the election was in, you may so state. A I don't recall the year it was in.

The Court: But, Mr. Marley, there are only a few elections. Would that tend to indicate that maybe you are mistaken?

The Witness: It may tend to indicate I was mistaken.

The Court: That is why I want to give you plenty of time to check each year.

[fol. 566]

The Witness: It may be I am confusing a convention election that was held in one of the years that negotiations were taking place in.

Mr. Cohn: We are talking about an event that took place 10, 11 or 12 years ago, about that time?

The Witness: Yes.

Mr. Cohn: Would your union records—

Mr. Kushner: Your Honor, I object to this.

The Court: Yes. Mr. Kushner, do you want to go ahead?

Mr. Kushner: Yes, sir.

The Court: All right.

Mr. Kushner: May I have this marked for identification, please.

(Plaintiff's Exhibit 82 marked for identification.)

By Mr. Kushner:

Q Mr. Marley, is Exhibit 82 for identification a copy of the Hotel and Club Voice dated May 2, 1962? A Yes, it is.

Q And this issue of the newspaper deals with the 1962 [fol. 567] general election of Local 6? A It does.

Mr. Kushner: I offer Exhibit 82 for identification in evidence.

Mr. Lurie: No objection.

The Court: Mark it.

(Plaintiff's Exhibit 82 was received in evidence.)

Q Mr. Marley, pages 2 and 3 of Plaintiff's Exhibit 82 indicate the candidates in every district for all offices in the Local 6 general election of 1962, do they not? A They do.

Q Isn't it a fact that in that general election there was opposition only for a few assembly seats in two districts? A In 1962?

Q Yes, sir. A Yes.

Q And can you tell us what the voter turnout was in the election of May 1962? A The voter turnout was 7,131.

Q Is that the lowest voter turnout of any of the elec- [fol. 568] tions listed in your Exhibit E? A Yes, sir.

Q To what do you attribute the lack of—strike that, please.

To what do you attribute the low turnout in the 1962 general election? A If I knew the answer to your question, sir, I would be able to cure it. I don't know the answer to that question.

Q You don't attribute it to the fact that there was opposition for only a few assembly seats? A No.

Q You don't know what to attribute it to? A I do not.

Q I am interested in asking you about these classes you run for union members. What sort of training classes

do you run? A At the present moment we have no classes in operation, but when we do run them, we have several types of classes.

Q When was the last year that you ran classes? A I don't know.

Q Can you give us an approximate period? A Prob-
[fol. 569] ably around—let me put it this way: there are classes going on all of the time in the union. There are none at the present time but there were classes up until the beginning—up until the end of 1965. We have all kinds of classes in the union.

The Court: I guess you are talking only about officer training classes, aren't you, these classes that were run by Cook—

Mr. Kushner: As I understand it, there are no classes per se for training officers. If I am wrong, Mr. Marley will correct me.

The Court: All right, I withdraw my interruption.

Q You mentioned that there were classes as recently as 1965, sir? A Yes.

Q What were those classes? A Those are classes for upgrading members in the union—taking a maid and training her to become a telephone operator—trying to upgrade our members.

Q I am not referring to those types of classes. I am referring to types of training related to collective bargain-
[fol. 570] ing— A I understand.

Q Areas of union knowledge. A Usually we have those classes to train delegates to handle themselves better in the shop and these classes are also open to members who are not delegates and members do take advantage of them.

Q When was the last time you held these classes for delegates and others who may choose to enter them? A I don't have that date. It is probably 1963 or '64, but I don't have the date.

Q Do you know how long the duration of those classes was? A The classes vary depending on the type of class. Some might be for six weeks, some for a periods of months, when we had those classes.

Q What were the subjects taught in these classes? A Well, in the beginning of the classes, before they moved up to it, usually the subjects taught, if you want to use the word "taught," is a better knowledge of the contract, how to handle claims for sick members, how to advise a member who was sick in the shop. If you were a delegate, [fol. 571] what to do in case there was an accident in the shop, and generally matters of that type so that the delegate would be informed as to how to take care of your book in the event you got sick, how to report in for insurance, which a delegate very often does—all of the things a delegate should know about the union and the various benefits that may be derived from it.

Q Were there any other classes or training? A Yes. Out of some of these classes came an upgraded class, where it went more thoroughly into the handling and routine of the union.

Q Do you know how many people attended the initial training class? A In that one particular facet—

Mr. Lurie: Objection. I don't know what initial training class Mr. Kushner is talking about.

The Court: I will sustain the objection as to form. Can you phrase it in some way that would—

Mr. Kushner: Yes, sir.

Q Mr. Marley, did you just testify about a class for department delegates and others who might choose to go? [fol. 572] Was that the subject of your testimony? A Yes. The classes in the union are open to union delegates and in many instances to members who are not delegates who desire to become delegates or want to know more about their union.

Q You were speaking about the last time these classes were held, which was 1963, is that right? A I said I don't know the date of the last class. These classes have been going on for over 20 years and I attended these classes myself when I worked in the Waldorf Astoria.

Q You are not sure of the date these classes were last held? A No, I am not sure of that date, sir.

Q Did you say there were such classes, however, in 1963? A I don't know if there were. I would have to check the date of the last class. I don't know the date of it.

Q Do you think that these classes afford good experience in training to union members who aspire to higher union office? A Are you asking for my opinion?

[fol. 573]

Q Yes. A Yes, I am always in favor of this and I think they are of great help.

Mr. Kushner: No further questions, your Honor.

Mr. Cohn: No questions.

* * * *

[fol. 579]

The Court: Is it the Government's contention that a higher percentage of members vote in an election if there are no prior office-holding qualifications?

Mr. Kushner: Your Honor, the way you frame that question, I would have to answer no, it is not the Government's contention because, obviously, there are a lot more factors involved in any given election than whether or not there exists in the union bylaws a prior office-holding restriction.

* * * * *

EXHIBIT 4

Defendant's By-laws Revised October 15, 1963 (Excerpts)

Article I

Name, Objects and Jurisdiction

Section 1. Name and Affiliation. This organization shall be known as Hotel, Motel and Club Employees Union, Local 6 (hereinafter referred to in these By-Laws as the Union), affiliated with the Hotel and Restaurant Employees and Bartenders International Union, A.F.L.-C.I.O.

Section 2. Objects and Jurisdiction. The object of the Union shall be to organize all workers of the hotels, motels and clubs in the City of New York coming within the jurisdiction of our International; to better their condition morally, physically, socially and financially by providing for their mutual protection and the improvement of their conditions, and generally for the elevation of the craft and the improvement of the standard of living of the workers engaged therein.

* * * *

Article III

Structure, Government

Section 1. The Union shall have the following General Officers:

President
Secretary-Treasurer
General Organizer
Recording Secretary
President or Secretary-Treasurer of the New York Hotel and Motel Trades Council if a member of Local 6.

* * * *

Section 2. Departments. The Union shall be divided into departments as follows:

Banquet Department
Bar Department
Club Department
Dining Room Department
Housekeeping Department
Kitchen Department.

* * * *

Section 4. Department Delegates. Each established and recognized unit of a hotel, motel or club having five or more members in good standing in the Union shall be entitled to elect one department delegate. The department delegate for each unit having less than five members shall be appointed by the Vice-President of the district in which the unit is located. The Executive Board of the Union shall have final power to determine any question or controversy relating to the establishment of any department unit in a hotel, motel or club. The decisions of the Executive Board in respect to any such question or controversy may be appealed only to the Assembly.

Department delegates shall be elected for a period of one year at a meeting of members of the unit attended by a Vice-President or Business Agent or officer of the Union. It shall be the duty of the department delegates to cooperate with the Vice-President, Business Agents and officers of the Union in the handling of grievances and in all other matters in which their efforts can best serve the membership of the Union.

* * * *

Section 6. Districts. For the purpose of the proper functioning of the Union, the Union shall be divided into geographical districts and the Club District. The boundaries of the geographical districts shall be established by the Assembly and the number of districts and their geographical boundaries may be changed by the Assembly from time to time.

Section 7. District Councils. The Union membership of each district shall elect a Vice-President, Business

Agents and Assembly members, who, with the Department Delegates, shall comprise the District Council which shall be responsible to the members of the district. The number of Business Agents from each department in each district shall be determined by the Assembly. The District Council shall meet at least once every three months. The Vice-President elected by the district shall chair the District Council meetings, and the Business Agents of the district shall report to the District Council on their work in the hotels and motels within the district at each District Council meeting. Subject to the approval of the Executive Board and the Assembly, the District Council shall be the governing body of the district. In the event the Vice-Presidents elected by the various Districts as hereinabove set forth do not include at least one member from each of the Departments as listed in Article III, Section 2, the Assembly shall, at its Constitutional meeting, in accordance with procedures adopted by said meeting, elect a Vice-President or Vice-Presidents at large, as the case may be, from among the members of the Department or Departments not so represented.

Section 8. The Administrative Board. The General Officers, the Vice-Presidents and the Union's delegates to the New York Hotel and Motel Trades Council shall constitute the Administrative Board of the Union.

Section 9. Business Agents.

(a) The Union shall have a number of Business Agents. The number of Business Agents to be elected for each district from each department shall be determined by the Assembly at a meeting of the Assembly prior to the date of nominations for the election.

(b) The Assembly may, upon the recommendation of the Administrative Board, from time to time appoint and remove such additional appointed temporary, part-time and full-time Business Agents as it may deem to be in the best interests of the Union. Based upon the recommendation of the Executive Board and the Administrative Board of the Union, the Assembly shall determine the salaries and the terms of the appointed Business agents.

Section 10. Executive Board. The Union shall have an Executive Board, which shall consist of the members of the Administrative Board together with such additional members as shall be elected to the Executive Board by the Assembly from among its members at the first meeting of the Assembly.

Members of the Executive Board so elected shall be representative of the various departments of the Union on the following basis:

The Assembly shall elect one Executive Board member from each department for each 500 members of the department of the Union in good standing, or major fraction thereof, provided, however, that each department shall in any event be entitled to not less than three members of the Executive Board.

The Business Agents of the Union shall attend meetings of the Executive Board and shall have a voice but no vote.

Section 11. Assembly. The Union shall have an Assembly which shall consist of delegates elected in the manner provided for in Article IV, Section 3, of these By-Laws. Representation to the Assembly shall be on the following basis:

The members of the Union in each district shall be entitled to elect one delegate for each 75 members in good standing, or major fraction thereof, working in such district. Said delegates shall be elected from among the members of the various departments in each district in such proportion as the number of members in each Department in the district bears to the entire membership of the district. Not more than one delegate from the same department shall be elected in any house, except in those instances where there are more than 75 members of the Union, or a major fraction thereof, from the same department working in the same house. In such case, one delegate from each 75 members, or major fraction thereof, working in the same department shall be elected, but in no event shall more than four delegates be chosen from any one department in any individual house. No more than two banquet-waiter delegates shall be elected

from any one house, irrespective of the total number of banquet waiters that may be working in any one house. Each department in each geographical district shall be entitled to elect at least on delegate.

The Assembly shall, at the meeting of the Assembly held prior to nominations, establish the minimum number of Assembly members to be elected by the Club district. The Assembly shall, at said meeting, also establish the minimum number of Assembly members to be elected in each District from members belonging to the Bar and Banquet Departments.

Should more than the permissible number of delegates from any house or department receive the highest number of votes, only the number of delegates permitted to be elected from said house or department in accordance with the standards established by this Section of the By-Laws shall be deemed elected, and the candidate or candidates, as the case may be, receiving the next highest number of votes, whose election is permissible under such standards, shall be deemed elected.

The members of the Administrative Board of the Union and the Business Agents of the Union shall automatically be members of the Assembly and shall have both voice and vote therein. The members of the Administrative Board and the Business Agents, however, shall not be eligible for election to either the Executive Board or departmental boards.

Section 12. Meetings of the Assembly. The Assembly shall meet quarterly, one of which meetings each year shall be a full day's meeting. The Administrative Board shall, with the approval of the Executive board, at least once in every three years, designate one of said full day meetings of the Assembly as a Constitutional Meeting.

The President of the Union shall preside over all meetings of the Assembly.

Decisions and activities of the Administrative Board, the Executive Board and the Department Boards shall be submitted to the Assembly for discussion and action.

Upon the recommendation of the Administrative Board, the Assembly shall establish the boundaries of the geographical districts of the Union, pursuant to the author-

ity granted in Article III, Section 6. Said boundaries and the number of geographical districts may be modified from time to time. In addition, the Assembly shall carry on such business of the Union as it may deem in the best interests of the Union.

* * * *

Article IV

Nominations, Elections, Appointments Tenure and Qualifications

Section 1. Nominations of General Officers, Vice-Presidents, Business Agents and members of the Assembly. Nominations of candidates for General Officers, Vice-Presidents, Business Agents and members of the Assembly shall be held at least two weeks prior to the date of the general election for which the nominations are made, and shall take place in accordance with such procedure as may be prescribed by the Executive Board.

Section 2. Election of General Officers. The President, Secretary-Treasurer, General Organizer and Recording Secretary shall be elected by Australian ballot in a general election in which all members of the Union in good standing shall be eligible to vote.

Section 3. Election of Vice-Presidents, Business Agents and members of the Assembly. The Vice-Presidents, Business Agents and members of the Assembly shall be elected by the districts by secret ballot at the same general election at which the General Officers of the Union are elected. Each district shall be entitled to elect one Vice-President and as many Business Agents as the Assembly shall determine are to be elected by the district prior to the date of nominations. The number of Assembly members to be elected in each district shall be determined in accordance with the provisions of Article III, Section 11 of these By-Laws. The Assembly may, should it deem it advisable, establish election districts within one or more districts and each such election district shall elect members of the Assembly as if said election district were a district.

* * * *

Section 5. Terms of Office and time of Elections.

(a) The general election of all General Officers, Vice Presidents, elected Business Agents and Assembly members shall be held in May of 1965 and every three years thereafter.

(b) The term of office of all General Officers, Vice Presidents, elected Business Agents and Members of the Assembly shall be for three years.

(c) The Secretary-Treasurer, not less than fifteen days prior to the date of nominations, shall mail to each member in good standing at his last known home address a notice of the offices to be filled and the time, date, place and manner of submitting nominations, as well as the time, date and place of said election. The notice shall bear the signatures of both the President and Secretary-Treasurer.

Section 6. Election Procedure.

a. Election and Objections Committee. The Assembly upon recommendation of the Executive Board at its meeting immediately preceding the date of nominations provided for in Article IV, Section 1 of these By-Laws, shall designate an Election and Objections Committee of six members, consisting of one member from each department of the Union. The Chairman of the said Committee shall be appointed by the Assembly from among the six members thus designated. Members of the Election and Objections Committee shall not be eligible as candidates for any office in such election. The function of the Election and Objections Committee shall be to establish rules and regulations for the holding of the election. Such rules and regulations shall not conflict with the provisions of these By-Laws and shall be consistent with the basic principles as established in these By-Laws. The Election and Objections Committee shall also have the power to rule on any objections as to eligibility of any candidate to run for office, subject only to appeal to the General President of the International Union.

b. Secret Ballot. All voting at a general election shall be carried on by the use of voting machines. However, if

the Assembly decides that because of physical difficulties or unjustified expense it is impractical to use voting machines, the Assembly may provide by a two-thirds vote for some other form of secret ballot under proper safeguards.

c. Installation Into Office. The installation of officers and Assembly members shall take place as soon as practicable after each election.

Section 7. Eligibility to be a Candidate for and to Hold Office in the Union.

a. With respect to membership in the Union. In order to be eligible for nomination as an officer, a candidate must possess the following qualifications: (1) He must be a member of the Union in continuous good standing for a period of two years immediately preceding his nomination; (2) He must be a member of either the Assembly or the Executive Board, or else, at some time in the past, have served at least one term on either the Executive Board, the Assembly, or the old Shop Delegates Council. In order to be eligible for nomination as a member of the Executive Board, as a delegate to the Assembly, or as a department delegate, a candidate must be a member of the Union in continuous good standing for a period of at least one year immediately preceding his nomination.*

b. With respect to association with subversive organizations. No person shall be eligible, as a candidate for or to hold any office in this Union or to serve as a delegate to any organization with which this Union is affiliated or to the International Convention, if such person associates himself with Communists, Facists or similar organizations, or the Ku Klux Klan or Columbians. Such eligibility shall likewise be denied where a person associates himself with, lends support or subscribes to the subversive doctrines of any of the organizations enumerated herein, similar organizations, or any organization or group that expounds or promotes any doctrine or philos-

* (Footnote supplied.) Errata pasted in at the beginning of by-laws reads:

Article IV, Section 7A
First word on tenth line should be "year" instead of "term."

ophy inimical to or subversive of the fundamental purposes of the Constitution of the Government of the United States, of the A.F.L.-C.I.O., of the International Union or of this Union.

* * * *

Section 9. Vacancies in Position of Elected Officer. Whenever any position of elected Officer in the Union, including that of a General Officer, shall become vacant by reason of the death, resignation, removal or inability of the person elected to that position to serve, a successor to fill the vacancy for the unexpired term shall be designated by the General Officers. Such designation shall become effective immediately, subject to subsequent approval by a majority of the Executive Board and of the Assembly.

* * * *

Section 13. Non-Attendance at Meetings. Any member of the Executive Board, the Board of Trustees, a Department Committee, a Department Board, or the Assembly who fails to attend two successive meetings of any of said respective bodies of which he may be a member without a reasonable excuse for such non-attendance, shall be automatically dropped therefrom; and the resulting vacancy shall be filled in the manner prescribed in these By-Laws.

Article V

Meetings

Section 1. Meetings of the Executive Board, the Board of Trustees and of the Department Boards. The Executive Board, and the Board of Trustees shall meet regularly at least once a month except in July and August. The Department Boards shall meet at least once every two months except in July and August.

Section 2. Meetings of the Assembly. Meetings of the Assembly shall be held regularly at least once every three months. One meeting each year shall be a full day meeting. The first full day meeting after the election of the Assembly shall be the Constitutional Meeting. Special meetings of the Assembly may be held at the direction of the Executive Board on not less than five days' notice in

writing, mailed by the Secretary-Treasurer of the Union to each member of the Assembly at his last known address.

* * * *

Section 6. Quorum. A majority of the members of the Executive Board, the Board of Trustees, the Department Boards, the District Councils and the Assembly shall constitute a quorum at meetings of each of these respective bodies.

Article VI

Rights, Powers and Duties of Union Officers and Bodies

Section 1. The Assembly. The Assembly shall be the highest body of the Union. The Assembly shall establish the geographical districts of the Union provided for in Article III, Section 6.

Section 2. The Executive Board. The Executive Board shall act as the general governing body of the Union between meetings of the Assembly. Among other things, the Executive Board shall have the power to determine, prior to nomination, the salary and compensation to be paid to the officers of the Union, subject to the approval of the Assembly; and action of the general officers in establishing positions of employees of the Union other than elected officers and in determining the compensation to be paid to such employees, shall be subject to the approval of the Executive Board. The Executive Board shall also have the power to appoint the Trustees of the Hotel, Motel and Club Employees Union Local No. 6 Insurance Fund and the Trustees of the Club Employees Pension Fund. In addition to the powers and functions vested in the Executive Board by this section and other provisions of these By-Laws, the Executive Board shall have such other general powers as are usually possessed by Executive Boards in Local Unions.

Section 3. The Administrative Board. The Administrative Board shall act as the general governing body of the Union between meetings of the Executive Board. It shall have the right, in consultation with the General Organizer, to transfer and assign Business Agents to districts and tasks throughout the Union.

* * * *

EXHIBIT 2

Defendant's By-Laws Revised March 1959

* * * *

Section 7. Eligibility to be a Candidate for and to Hold Office in the Union.

a. With respect to membership in the Union. In order to be eligible for nomination as an officer, a candidate must prossess the following qualifications: (1) He must be a member of the Union in continuous good standing for a period of two years immediately preceding his nomination; (2) He must be a member of either the Assembly or the Executive Board, or else, at some time in the past, have served at least one term on either the Executive Board, the Assembly, or the old Shop Delegates Council. In order to be eligible for nomination as a member of the Executive Board, as a delegate to the Assembly, or as a department delegate, a candidate must be a member of the Union in continuous good standing for a period of at least one year immediately preceding his nomination.

b. With respect to association with subversive organizations. No person shall be eligible, as a candidate for or to hold any office in this Union or to serve as a delegate to any organization with which this Union is affiliated or to the International Convention, if such person associates himself with Communists, Fascists or similar organizations, or the Ku Klux Klan or Columbians. Such eligibility shall likewise be denied where a person associates himself with, lends support or subscribes to the subversive doctrines of any of the organiaztions enumerated herein, similar organizations, or any organization or group that expounds or promotes any doctrine or philosophy inimical to or subversive of the fundamental purposes of the Constitution of the Government of the United States, of the American Federation of Labor, Congress of Industrial Organizations, of the International Union or of this Union.

* * * *

EXHIBIT 3

Defendant's By-Laws Adopted September 26-27, 1951

* * * *

Section 8. Eligibility to Be a Candidate For and To Hold Office in the Union.

a. With respect to membership in the Union. In order to be eligible for nomination as an officer, a candidate must possess the following qualification: (1) He must be a member of the Union in continuous good standing for a period of two years immediately preceding his nomination; (2) He must be a member of either the Assembly or the Executive Board, or else, at some time in the past, have served at least one term on either the Executive Board, the Assembly, or the old Shop Delegates Council. In order to be eligible for nomination as a member of the Executive Board, as a delegate to the convention, or as a department delegate, a candidate must be a member of the Union in continuous good standing for a period of at least one year immediately preceding his nomination.

* * * *

EXHIBIT 4

Defendant's By-laws Adopted December 9-11, 1947

* * * *

Section 1a: In order to be eligible to run for paid office, a candidate must possess the following qualifications: (1) He must be a member of the local union in continuous good standing for a period of one year immediately preceding his nomination. (2) He must be a member of either the Shop Delegates Council or the Executive Board, or else, at some time in the past, have served at least one term on either board.

* * * *

PLAINTIFF'S EXHIBIT 27

MINUTES OF ELECTION AND OBJECTIONS COMMITTEE

Friday, April 23, 1965
3:30 P.M.

OFFICER ATTENDING:

Mr. James Marley, Secretary-Treasurer and Assistant Milton Waitzman

MEMBERS ATTENDING:

Hans Cohn, King Sherrod, Anthony Valdivieso, Harry Lever, Georgia Kelly

MEMBER ABSENT:

Frank Velez

ALSO PRESENT:

Mr. Jerome Lurie of Boudin, Cohn and Glickstein and Walter Smith, Office Manager.

Meeting was called to order by Chairman Hans Cohn who informed the Committee that the minutes of the previous meeting held April 21st were not completed and that he would entertain a motion to have these minutes read at the next meeting of the Committee. Motion duly made and seconded was carried.

He further stated that he had invited Jerome Lurie, Esq., counsel for the Union, in the event that the Committee might run into any question that would require a legal opinion. He had also invited the Secretary-Treasurer of the Union for the purpose of making the technical and office staff available in providing the Committee with all of the necessary records.

Notices had already been sent to certain candidates where there appeared to be a question of eligibility or where the Committee had not been informed as to whether they were running in a group or as independent candidates. The Committee then started to examine the records, as provided by the office staff of the Secretary-Treasurer.

The records for Robert Bruce showed that he had not served as a member of the Executive Board, the Assembly or the old Shop Delegates Council. Following a discussion, the Committee ruled Robert Bruce ineligible to run for the office of Secretary-Treasurer in accordance with Article 4, Section 7 of the By-Laws. The records of Robert Bruce showed that he had two years good standing in the International Union and the Committee ruled in accordance with the Constitution of the International Union that he was eligible to run for the position of delegate to the International Convention.

Robert Bruce was then called before the Committee and the Chairman explained the findings of the Committee in regard to his nomination. The Chairman asked Robert Bruce if he had ever served as a member of the Executive Board, the Assembly or the old Shop Delegates Council. He replied that he had not and requested that his name appear on Row B. He also requested that the Committee inform him in writing its decision in regard to his ineligibility.

The records for Victor Manello indicated that he had deposited a withdrawal card in September, 1964. Brother Manello, running for the position of Business Agent in District 2, was ruled ineligible to run in accordance with the By-Laws of Local 6. Brother Manello requested a written statement from the Committee regarding this decision.

The Committee then examined the records of Gene Quara who was nominated for the position of Business Agent in District 2 and for the same position in District 4. The records showed that he had never served as a member of the Executive Board, the Assembly or the old Shop Delegates Council. Brother Quara appeared before the Committee and verified the fact that he had not served on any of the three aforementioned bodies. The Committee ruled in accordance with Article 4, Section 7 of the By-Laws that Brother Quara was ineligible to run. Brother Quara requested that a written statement of this decision be sent to him.

Brother Charles Salavarria's records were examined by the Committee and found eligible to run for the position of General Organizer having established two years' good standing prior to nomination and having served as a member of the Assembly. The Committee informed Brother Salavarria of this decision and he requested a written statement of this decision. He further informed the Committee that he wished to be placed on Row B on the ballot.

Sister Anna Antuney running for the position of Assembly Delegate and International Convention, was ruled eligible to run for both positions after checking her records by the Committee. Sister Antuney after hearing the decision, stated that she wished to decline for the position of International Convention Delegate (Sister Antuney then signed a declination form and presented it to the Committee). For the position of Assembly Delegate Sister Antuney stated that she wished to run as an independent candidate.

The records of Rogelio Aguiar were examined and indicated that he had not served as a member of the Executive Board, the Assembly or the old Shop Delegates Council. Brother Aguiar appeared before the Committee and the Chair asked him if he had ever served as a member of the abovementioned bodies. Brother Aguiar replied that he had not. The Committee ruled Brother Aguiar ineligible to run for the position of Vice President and Business Agent of District 4 in accordance with Article

4, Section 7 of the By-Laws. Brother Aguiar requested a written statement of this decision.

The records of Brother Jacques Gabay indicated that he was eligible to run for the position of Business Agent and International Delegate of District 4. The Committee ruled Brother Gabay eligible and was thus informed. Brother Gabay stated that he wished to be placed on Row B and that a written statement be sent to him.

The Committee after examining the records of Henri Hanssler, ruled him eligible to run for Assembly Delegate and International Delegate in District 4. Brother Hanssler requested that he be placed in Row B.

Brother Newman Butler running for Business Agent in District 2 was found eligible according to his records. Brother Butler requested to run as an independent candidate.

Michael Demetroulis' records showed that he had not served on the Executive Board, the Assembly or the old Shop Delegates Council. These facts were verified by Brother Demetroulis. He was ruled ineligible to run in accordance with Article 4, Section 7 of the By-Laws.

Adolph Menjou Mims running for the position of Recording Secretary, was found ineligible to run since he did not become a member of Local 6 until September, 1963 and thus had not established two years of membership. In accordance with the International Constitution, Brother Mims was ruled eligible to run for International Convention Delegate. He requested his name to appear on Row B.

The records of Anthony Kemmel showed that he had deposited a traveling card in April, 1963. The Committee ruled Brother Kemmel ineligible to run for both positions of Business Agent and International Delegate in accordance with the By-Laws.

The records of Joseph Rosario showed that he had not served in the Executive Board, the Assembly or the old Shop Delegates Council. Brother Rosario verified the fact that he had not served on the abovenamed bodies and the Committee ruled him ineligible to run for the position of Vice President in District 5. He was found eligible to run for the position of delegate to the International

Convention. Brother Rosario requested that his name appear on Row B.

Brother Oscar Mottley's records showed that his dues were in good standing and the Committee thus ruled him eligible to run for the position of International Convention Delegate. Brother Mottley requested that his name appear on Row B.

Juan Hernandez running for the position of Assembly Delegate, was ruled eligible to run for that position by the Committee. He requested that he be placed as an Independent Candidate in the Election.

The records of Robert Pugh indicated and he agreed that he had not served on the Executive Board, the Assembly or the old Shop Delegates Council. The Committee ruled that Brother Pugh was ineligible to run for Business Agent in District 6. Brother Pugh requested a written statement of this decision.

Brother J. G. Douglas running for Assembly Delegate in District 4 was ruled eligible to run for that position by the Committee. Brother Douglas requested that he be placed as an Independent Candidate on the ballot.

George Kyro's records indicated that he had not served on the Executive Board, the Assembly or the old Shop Delegates Council. He verified this and in accordance with Article 4, Section 7 of the By-Laws, the Committee ruled Brother Kyro ineligible to run for the position of Business Agent in District 6. He requested a written statement of this decision.

Armand Muller's records showed that he had served in the Assembly prior to nomination and was ruled eligible to run for Business Agent in District 2. Brother Muller stated that he wished his name to appear in Row B.

Brother Arturo Reyes was found eligible to run for Delegate to the International Convention District 2. He requested to be placed on Row B.

The records of Robert Vilches indicated that he had deposited a withdrawal card in October, 1964 which did not give him two years good standing in the Union. The Committee ruled Brother Vilches ineligible to run for either the position of Vice President or International

Delegate. Brother Vilches requested a written statement of this decision.

Joseph De Jesus running for the position of Business Agent in District 5, was found ineligible to run under Article 4, Section 7. He requested a written statement of this decision.

The Committee requested the Assistant to the Secretary to prepare a letter which would be mailed out to all nominees after the Committee had checked on their eligibility. The letter should also indicate the row on the ballot to which their names had been assigned.

The Committee also agreed to grant the request of the Administration for Row A and to grant the request of the Membership Party for Row B. All other candidates running as independents will be placed on Row C.

Brother Joseph German and Brother James Hightower who were asked to appear before the Committee to place their names on the ballot, did not appear. The Committee agreed to meet on April 26 to complete its examination of nominees as to eligibility. The Committee requested the Secretary-Treasurer's office to notify Joseph German and James Hightower of this meeting if they wished to appear.

The Meeting adjourned at 6:00 P.M.

Fraternally submitted,

/s/ Hans Cohn
HANS COHN
Chairman

HC:ms
oeiu:153

Minutes of Election and Objections Committee

Monday, May 3, 1965
3:30 P.M.

OFFICER PRESENT:

James Marley, Secretary-Treasurer and Assistant Milton Waitzman

MEMBERS PRESENT:

King Sherrod, Frank Velez, Tony Valdivieso, Georgia Kelly, Harry Lever and Hans Cohn

Minutes of the previous meetings of April 21, 23, and 26 were read and approved by the Committee.

The following correspondence was brought to the attention of the Committee by Chairman, Hans Cohn.

A. A letter from Florencio Castro thanking the Committee for having been placed on the ballot.
B. Letter dated April 28th from Adolphus M. Mims requesting formal written determination as to the eligibility to run for office and a further request that the findings of the Committee be published in the next issue of "Hotel."
C. Letter dated April 27th registering the objections of the "Membership Pary of Local 6" to the procedures of the Committee in the General Election.
D. Letter dated May 3rd in reply to Brother Mims' letter of April 28 was read to the Committee by Brother Cohn. The Committee approved the contents and authorized it being forwarded to Brother Mims.

Brother Marley notified the Committee that as per the request of Brother Mims' letter, it was brought to the attention of the Editor of "Hotel" and since Local 6 does not control the policies of Hotel, the decision to print the letter will be based on the decision of the Hotel Trades Council.

The following rules were drawn up by the Committee for the coming Election:

1. No electioneering will be allowed within the polls.
2. The Administration Slate—Row A—and the Membership Party Slate—Row B—will each be allowed one watcher at each registration point. Watchers will not be allowed to interfere with registration. They must be instructed by the member of the Election and Objections Committee or its deputy present that if they have any challenge or any questions, the questions should be directed to the member or the deputy of the Election and Objections Committee.
3. The Committee will arrange to have challenge ballots present with a sufficient supply of envelopes so that anyone challenged may mark a ballot in secret (a ballot to be filled in the usual way).
4. Independent candidates will each be allowed one watcher at each registration point.
5. Watchers must bring in credentials signed by the head of his slate or by the independent candidate.
6. Where there are slates running, members will be able to vote by pulling down the lever of the candidate's name or if they wish to vote for the whole slate, by pulling the large lever located on the left. Slate levers will be assigned to Row A and Row B.

Because of the number of polling places, it will be necessary for the Committee to appoint deputies; this will be done at a meeting to be held on May 10th.

Procedures on the Actual Voting at the Polling Places:

When a member comes into the polling place, he must present his Union book showing a dues stamp or initiation and/or reinstatement stamp for the month of February, or any month thereafter.

No member will be allowed to vote unless he presents a properly stamped Union Book.

When entering the polling place, the member will present his book to the registrar who will enter on

the registration sheet the book number and place of employment. The member will then sign along side his place of employment. When this is done, the registrar will overstamp the member's book and direct him to the machines. As soon as his vote is casted, the watcher will request the member to leave the polling place.

The Union is asked to provide extra help and if possible, remain open until the closing of the polls so that any member who does not have a properly-stamped book, may have an opportunity to come to the Union to have his book stamped in order to vote.

The above procedures were adopted by the Committee. Meeting adjourned at 5:00 P.M.

Fraternally submitted,

/s/ Hans Cohn
HANS COHN
Chairman

JM:ms
oeiu:153

(Copies of the correspondence mentioned in these minutes are attached)

* * * *

Hotel, Motel & Club Employees Union Local 6
Hotel and Restaurant Employees and Bartenders
International Union AFL-CIO [Union Label]

305 West 44th Street
New York, N.Y. 10036
CIrcle 6-8323

May 3, 1965

Mr. Adolphus M. Mims, Recording Secretary
Membership Party
Woodstock Hotel
127 W. 43rd Street
New York, N.Y. 10036

Dear Brother Mims:

This will acknowledge receipt of your letter of April 28, 1965, in which you request "a formal written determination as to our eligibility to run for office on the "B" Slate".

Please be advised that on April 24, 1965, the Election and Objections Committee wrote each candidate nominated to run in the election to be held on May 18, 1965, and informed him as to its ruling on his eligibility. The Committee also informed the eligible candidates on which slate, if any, their names would appear.

For your information, the following candidates were ruled, by the Election and Objections Committee, eligible to run on the "B" Slate for the positions noted below:

Armando Carballo	President
Charles Salavarria	General Organizer
Armand Muller	Business Agent
Jacques Gabay	" "
Joseph German	Assembly Delegate
Henri Hanssler	" "
Robert Bruce	Delegate to International Convention
Armand Carballo	" " "
Jacques Gabay	" " "
Henri Hanssler	" " "

Adolphus M. Mims	Delegate to International Convention
Oscar Motley	" " "
Arturo Reyes	" " "
Joseph Rosario	" " "

The following members nominated were found, by the Election and Objections Committee, ineligible to run for the positions noted below:

Rogelio Aguiar, Jr.	Vice President
Robert Bruce	Secretary-Treasurer
Kenneth Davis	Vice President
Joseph De Jesus	Business Agent
Michael Demetroulos	Vice President
Anthon Kemmel	Business Agent
Anthon Kemmel	Delegate to International Convention
George Kyro	Business Agent
Victor Manello	" "
Adolphus M. Mims	Recording Secretary
Robert Pugh	Business Agent
Gene Quara	Vice President
Joseph Rosario	Vice President
Robert Vilches	Vice President
Robert Vilches	Delegate to International Convention

In each notification letter to those declared ineligible, the reason for the ruling of the Election and Objections Committee was set forth. The notification letter also contained the necessary information in the event any member ruled ineligible wished to appeal the decision of the Committee.

We will be pleased to notify the editor of "Hotel" as to our ruling, but cannot guarantee that it will be published. That is entirely up to the editor of "Hotel". For your information, your letter was received after that issue of "Hotel", scheduled to appear on May 3, 1965, went to press and it, therefore, cannot, under any circumstances, be included in that issue.

Fraternally yours,

HANS COHN, Chairman
Election and Objections
Committee

HC/mg
oeiu/153

MEMBERSHIP PARTY LOCAL 6,
Woodstock Hotel,
127 West 43rd. St. NYC, NY 36

April 28, 1965

Brother Hans Cohn, Chairman of
The Election and Objections Committee and
The Administration Local 6
Hotel, Motel & Club Employees Union Local 6
305 West 44th Street, New York, N.Y. 10036

Brother Hans Cohn:

We, the Membership Party of Local 6, as duly nominated Candidates, here by request of your Committee, a formal written determination as to our eligibility to run for office on the "B" Slate.

We futher request that these findings by your Committee, be published in the next issue of the "HOTEL", slated for May 3rd. 1965.

Fraternally yours,

/s/ Adolphus M. Mims
ADOLPHUS M. MIMS
Recording Sect.
Membership Party
Local 6

Copy: Dept. of Labor, (BLMR) 233 West 49th. Street
NYC, N.Y. 10019

April 27, 1965.

The Election & Objection Committee, & The Administration
The Hotel, Motel & Club Employees Union Local #6
305 West 44th Street
New York, N. Y. 10036

Members of the Local 6 Elections & Objections Committee and the Administration:

For the first time in fifteen (15) years an Opposition Party to your Administration has been organized and offered to run in your General Elections of May 19, 1965. We, the Candidates for the Opposition had our names placed in nomination for the various offices. Through the application of your By-Laws and eligibility tests, however, you have practically eliminated the whole Opposition Slate whereby you have made it impossible for us to run for office. We protest and challenge your action on the following grounds:-

1. - Your rules for the qualifications of Candidates are questionable, unreasonable and un-democratic.

2. - You have not tested and screened the nominees equally, nor have you imposed the rules uniformly.

3. - You have prevented us from selecting and nominating the Candidates of our choice.

4. - You have denied the Opposition fair and equal coverage in our Union Publications.

Very truly yours,

THE MEMBERSHIP PARTY LOCAL 6

The Woodstock Hotel
127 West 43rd Street
New York, N. Y. 10036

MP/mh
Copies to:

International President, Ed Miller 525 Walnut Street, Cinn. 2, Ohio

Department of Labor, Bureau of Labor and Management Reports
233 West 49th Street, New York, N.Y. 10019

THE MEMBERSHIP PARTY OF LOCAL #6 (THE "B" SLATE)

Armando Carballo
Robert D. Bruce
Robert Richardson
Ozzie Quann
A. H. Wellen
Jacques Gagnon
Charles Salvemini
Willie Bowden
Robert Duffy
Adolphus M. Mims
Joseph Ramos
Joseph DeJesus
Anthony Hemmel
Florence Wilson
Rogelio J. Aguiar Jr.
Victor Ramello

Page 1

EXHIBIT 34

REPORT OF THE ELECTION AND OBJECTIONS COMMITTEE FOR THE MAY 19, 1965 GENERAL ELECTION

OFFICER PRESENT:

Mr. James Marley, Secretary-Treasurer and Milton Waitzman, Assistant to the Secretary.

MEMBERS PRESENT:

Hans Cohn, Chairman,	Dining Room Department
King Sherrod	Kitchen Department
Georgia Kelly	Housekeeping Department
Harry Lever	Club Department
Frank Velez	Bar Department
Anthony Valdivieso	Banquet Department

The Election and Objections Committee having been duly constituted under Section 6A, Article 4 of the Local 6 By-Laws, reconvened on May 24, 1965 for the purpose of checking on the results of the General Election of May 19th.

In preparation for the General Election, Nominations for General Officers and the International Convention Delegates took place at the Assembly Meeting on April 6, 1965. Members of the Election and Objections Committee were present to supervise the meeting. Nomination meetings for all other positions, Vice-Presidents, Business Agents and Assembly Delegates were held on April 13, 1965. A member of the Election and Objections Committee was present at each of the nomination meetings.

The election was held on May 19, from 8:00 A.M. to 7:00 P.M. at the following polling places:

District I	Sheraton Atlantic Hotel—Crystal Room
District II	Piccadilly Hotel—Oxford Room
District III	Barclay Hotel—Vacant Store

District IV	Great Northern Hotel—Area # 1
District V	Henry Hudson Hotel—Ballroom
District V	Manhattan Towers Hotel—Lobby
District VI	St. George Hotel—Stardust Room
District VI	Forest Hills Inn
Clubs	Downtown Area—122 Cedar Street
Clubs	Uptown Area—Palm Gardens

There were 11,243 valid ballots cast and 11 challenged ballots, making a grand total of 11,254 votes cast. A member of the Election and Objections Committee was on duty at each of the polling places. The committee met after the election and made a complete check on all returns and tally sheets.

The following are the results:

FOR PRESIDENT

James Marley	9,314	(elected)
Armando Carballo	1,347	

FOR SECRETARY-TREASURER

Betty Bentz	9,307	(elected)

FOR GENERAL ORGANIZER

Vangel Kamaras	9,216	(elected)
Charles Salavarria	1,299	

FOR RECORDING SECRETARY

Armando Betances	9,249	(elected)

INTERNATIONAL CONVENTION DELEGATES

Betty Bentz	8,741	(elected)
Armando Betances	8,680	(elected)
Vangel Kamaras	8,716	(elected)
Ralph Mandrew	8,615	(elected)
James Marley	8,707	(elected)
Charles Joseph Martin	8,695	(elected)
Domenick Menick	8,643	(elected)
Jay Rubin	8,701	(elected)
Richard Sirch	8,665	(elected)
Betty Smith	8,705	(elected)

International Convention Delegates—(Continued)

Robert Bruce	1,145	
Armando Carballo	1,154	
Jacques Gabay	1,114	
Henri Hanssler	1,119	
Adolphus M. Mims	1,097	
Oscar Motley	1,119	
Arturo Reyes	1,137	
Joseph Rosario	1,151	

DISTRICT 1

VICE PRESIDENT

Randolph Hagan	1,415	(elected)

BUSINESS AGENTS

Gilbert Campistrous	1,406	(elected)
Louise Mathews	1,415	(elected)
Louis Saulnier	1,404	(elected)

ASSEMBLY DELEGATES E.D. 1

Ollie Adams	675	(elected)
Rudolfo Alonzo	673	(elected)
Charles Anthony	668	(elected)
Ruth Carter	669	(elected)
Frank Catlett	663	(elected)
Jose Cruz	675	(elected)
Nellie Desmond	663	(elected)
Eduardo Garcia	668	(elected)
Josephine Greene	666	(elected)
Edward Harrison	656	(elected)
Bertha Johnson	660	(elected)
Charlotte Judah	650	(elected)
Helen Lewis	652	(elected)
John Lopez	661	(elected)
Nick Loukaides	656	(elected)
Joseph H. Lynch	657	(elected)
Joseph Mishula	646	(elected)
John Montalvo	657	(elected)
Mary Morris	645	(elected)

Assembly Delegates E. D. 1—(Continued)

John Myrick	643	(elected)
Rose Lee Naylor	639	(elected)
Octavio Olivieri	642	(elected)
Ruby Petersen	646	(elected)
Mabel Reese	639	(elected)
Higinio Reyes	640	(elected)
Phoebe Reynolds	643	(elected)
Joseph Rodriguez	649	(elected)
Irene Small	645	(elected)
Rosalie Stevens	643	(elected)
Steve Vlahakis	645	(elected)

ASSEMBLY DELEGATES E.D. 2

Ramon Acosta	725	(elected)
Charles Alford	708	(elected)
Luis Bermudez	716	(elected)
Mildred Booth	704	(elected)
Carrie Carpenter	703	(elected)
Erie Cooper	693	(elected)
John Dent	688	(elected)
Victor Diaz	694	(elected)
Ann Edwards	685	(elected)
Simon Freeman	683	(elected)
Bridget Gaine	681	(elected)
George Galanos	686	(elected)
Ophelia Garland	673	(elected)
Rosalie Greene	671	(elected)
Mary Hagans	676	(elected)
Julia Irving	664	(elected)
Benjamin Koonce	672	(elected)
Samuel Leonard	669	(elected)
Zaida Llana	662	(elected)
Norbert Lopez	669	(elected)
Joseph A. Losinno	658	(elected)
Ivan Mitchell	660	(elected)
Joaquin Nieves	666	(elected)
Costas Panos	668	(elected)
Elizabeth Reese	662	(elected)
Francisco Reyes	666	(elected)

Assembly Delegates E. D. 2—(Continued)

Jeanette Rivers	663	(elected)
Georgia Sanders	656	(elected)
Cora Bell Scott	655	(elected)
Molly Smith	653	(elected)
Nick Spinthakis	664	(elected)
Roberto Virue	655	(elected)

DISTRICT 2

VICE PRESIDENT

Domenick Menick	1,226	(elected)

BUSINESS AGENTS

Laviere Gentile	1,188	(elected)
Joseph Jackson	1,206	(elected)
Nettie Wiley	1,184	(elected)
Armand Muller	333	
Newman Butler	70	

ASSEMBLY DELEGATES E. D. 1

Orestes Alonso	596	(elected)
Edna Armstrong	582	(elected)
Emiline Boyea	584	(elected)
Pecolia Calliste	581	(elected)
Viola Courtney	584	(elected)
Dorothy Denard	584	(elected)
Ray Dorta	574	(elected)
Mamie Gadson	574	(elected)
Joseph Gaydos	574	(elected)
Theodore Lupu	581	(elected)
John N. Maglaras	583	(elected)
Knox Moran	578	(elected)
Yusuf Murat	568	(elected)
Isacio Nieves	583	(elected)
Louis Orros	579	(elected)
Mario Puntar	570	(elected)
Anibal Santiago	575	(elected)
Ruby Scott	569	(elected)
Rosalee Thomas	567	(elected)

Assembly Delegates E. D. 1—(Continued)

Bernard Traphan	564	(elected)
Elizabeth Veripapa	567	(elected)
Jean Williams	560	(elected)
Fannie Wilson	565	(elected)
Mary Woodard	564	(elected)

ASSEMBLY DELEGATES E.D. 2

Stephen Baranski	597	(elected)
Hattie Boyd	598	(elected)
Bridie T. Caslin	591	(elected)
Viola Christopher	595	(elected)
Luis Costa	589	(elected)
William Dowery	586	(elected)
Estelle Fields	586	(elected)
Agatha Fox	585	(elected)
Ernest Furtado	582	(elected)
Francisco Gomez	585	(elected)
Alfredo Gonzalez	585	(elected)
John F. Graham	581	(elected)
Irven Hemphill	581	(elected)
George Mavromatis	589	(elected)
Wesley Mitchell	580	(elected)
Arnold Mullet	578	(elected)
Sarah C. Nelson	577	(elected)
Mae Pescod	576	(elected)
Albert Revay	574	(elected)
Esther Robinson	573	(elected)
Mattie Robinson	569	(elected)
Cesar Rodriguez	575	(elected)
Narciso Rosa	573	(elected)
Juan Santana	573	(elected)
Mary Smith	571	(elected)
Tony Thrasher	570	(elected)
Manuel Torres	570	(elected)
Elizabeth Wells	572	(elected)
Mattie White	568	(elected)
Anna Antunez	40	
Juan Hernandez	41	

DISTRICT 3

VICE PRESIDENT

Betty Smith	1,565	(elected)

BUSINESS AGENTS

Joseph A. Bracero	1,578	(elected)
Gladys Morris	1,564	(elected)
David Nadel	1,566	(elected)

ASSEMBLY DELEGATES E.D. 1

William Acevedo	731	(elected)
Edward Allen	723	(elected)
Leopoldo Ayala	719	(elected)
Minerva Bonner	715	(elected)
Julia Brady	715	(elected)
Flossie Mae Brown	714	(elected)
Jean Chaine	713	(elected)
Mary Collins	716	(elected)
James Constantino	714	(elected)
Gilbert deLeon	714	(elected)
Max Fraenkel	709	(elected)
Joseph Garcia	716	(elected)
Aristides Ginis	710	(elected)
Betty Greene	708	(elected)
Viola Jenkins	707	(elected)
Anna Kastrna	708	(elected)
George Lau	709	(elected)
Rebecca Leland	706	(elected)
John Lind	701	(elected)
Louis Mavromatic	705	(elected)
Candido Melendez	705	(elected)
Jean Miller	700	(elected)
Edward Morrison	698	(elected)
Mary Naughton	697	(elected)
Mary Petrucci	699	(elected)
Lena Rivers	697	(elected)
Julia Robertson	699	(elected)
Daniel Rodriguez	704	(elected)
Nicandro Soto	698	(elected)
Charles Tamburello	698	(elected)
Esther Williams	695	(elected)

ASSEMBLY DELEGATES E. D. 2

Catherine Bloom	812	(elected)
Jesse Boyd	804	(elected)
Ernest Caleno	809	(elected)
Melvin Collins	807	(elected)
John Curci	808	(elected)
John H. Drakeford	802	(elected)
Sergio Ferrari	807	(elected)
Julia Flynn	806	(elected)
Jesse Gontan	801	(elected)
Lillie Hernton	803	(elected)
Dorothy Hipp	798	(elected)
Priscilla Holmes	794	(elected)
Sylvia Jackson	795	(elected)
George Kaletsis	794	(elected)
Joseph Kanta	789	(elected)
Mary Lennon	794	(elected)
Carl Massey	797	(elected)
Rudolph Morgenstern	794	(elected)
Ronald A. Nelson	792	(elected)
Ann O'Grady	791	(elected)
Louis Pappalardo	796	(elected)
Peter Pappas	800	(elected)
Timothy Power	788	(elected)
Leo Rabinowitz	790	(elected)
Julia Romero	788	(elected)
Carmen Z. Santiago	794	(elected)
Bridget Slattery	788	(elected)
Aracillio Velez	788	(elected)
Dorothy Waltman	791	(elected)
Richard Wieninger	783	(elected)
John Xenos	784	(elected)

DISTRICT 4

VICE PRESIDENT

Charles Joseph Martin	1,936	(elected)

BUSINESS AGENTS

Lubos Pavlista	1,924	(elected)
Vito J. Pitta	1,942	(elected)

Business Agents—(Continued)

David Sola	1,903	(elected)
Jacques Gabay	262	

ASSEMBLY DELEGATES E. D. 1

Marcel Alicea	554	(elected)
Louise Anders	554	(elected)
James Averett	552	(elected)
Carmelo Aviles	555	(elected)
Gino Bertini	560	(elected)
Marion Connelly	556	(elected)
Mary Cooney	556	(elected)
Gonzalo B. Diaz	554	(elected)
Tasos Economou	561	(elected)
Fred Espinosa	552	(elected)
Anne Flanagan	555	(elected)
Mansuetto Gheno	558	(elected)
Serge Giacopelli	556	(elected)
Abe Gottesman	552	(elected)
Christos Johnson	554	(elected)
George Lambri	556	(elected)
Carmella Lewis	549	(elected)
Frieda Machts	551	(elected)
Vincent Mastrangelo	550	(elected)
Margaret Rausher	548	(elected)
Elio Reyes	545	(elected)
Ernest K. Robert	545	(elected)
Domingo Salicrup	543	(elected)
Catherine Stevens	545	(elected)
Stavros Tsiatsas	545	(elected)
Joseph Vazquez	544	(elected)
Eleanor Wheeler	543	(elected)
Elizabeth Woods	540	(elected)
Henri Hanssler	71	
James G. Douglas	14	

ASSEMBLY DELEGATES E. D. 2

Mary Ayers	773	(elected)
William C. Billias	773	(elected)
John Botti	775	(elected)

Assembly Delegates E. D. 2—(Continued)

Wanda Brown	760	(elected)
Rafael Cardona	766	(elected)
Ramon Garcia	767	(elected)
Nicholas R. Giammarino	765	(elected)
Joseph Golebiewski	764	(elected)
Diego Hernandez	768	(elected)
Sidney Kyriacos	774	(elected)
Bernard La Salle	767	(elected)
Raymond Lescrinier	760	(elected)
Julia Mitchell	761	(elected)
Bonnie L. Moses	755	(elected)
Julio Ortiz	759	(elected)
Jose Pacheco	757	(elected)
Arthur J. Pappas	759	(elected)
Ildefonso Romero	754	(elected)
Nereida Rosario	753	(elected)
Giovanni Sbarbo	752	(elected)
Dominic Tappero	753	(elected)
Cristobal Troncoso	751	(elected)
Spiro Vozoris	759	(elected)

ASSEMBLY DELEGATES E. D. 3

Marie Adams	558	(elected)
Doris Andrews	554	(elected)
Roy C. Bro[illegible]field	556	(elected)
Florencio Castro	556	(elected)
Julia Ceballo	556	(elected)
Vincent C. Ciurleo	549	(elected)
Herbert Colon	552	(elected)
William Dinwoodie	551	(elected)
Mary Donahue	548	(elected)
Gary M. Drucker	547	(elected)
Frank Gonzalez	550	(elected)
Bernard Herzbach	545	(elected)
Otelia Hunter	543	(elected)
Charles Mendez	543	(elected)
Joseph Napolillo	552	(elected)
Alfredo Navarette	541	(elected)
Nora O'Hanion	545	(elected)

Assembly Delegates E. D. 3—(Continued)

Willie Lee Owens	539	(elected)
Mario Pardo	547	(elected)
George Peri	544	(elected)
Zeno Pittaris	546	(elected)
Pasquale Puglisi	538	(elected)
Edna Ruffin	539	(elected)
William Smith	535	(elected)
Rose Swan	534	(elected)
Elizabeth Washington	533	(elected)

DISTRICT 5

VICE PRESIDENT

Al Szymanski	1,374	(elected)

BUSINESS AGENTS

Ralph Mandrew	1,363	(elected)
Marie Moreno	1,380	(elected)
Alberta Porter	1,354	(elected)

ASSEMBLY DELEGATES E. D. 1

David Aponte	673	(elected)
Basilio Ayala	678	(elected)
Dolly Brown	674	(elected)
Ida Brown	676	(elected)
Frank Cassella	676	(elected)
Miguel Cintron	675	(elected)
Ruth Coleman	674	(elected)
Vivian Davis	674	(elected)
Guillermo Esparra	671	(elected)
Ferdinand Garbani	671	(elected)
Sidney Glover	673	(elected)
Hortense Jackson	675	(elected)
James Miller	673	(elected)
Antonio Pelaez	674	(elected)
Lavada Pinkney	668	(elected)
Mildred A. Pusateri	669	(elected)
Melvin Reaves	665	(elected)

Assembly Delegates E. D. 2—(Continued)

Mary L. Reynolds	669	(elected)
Alma Scott	668	(elected)
Joaquin Virue	666	(elected)
James Walker	667	(elected)
Margot Weisser	665	(elected)
Alexander Williams	665	(elected)

ASSEMBLY DELEGATES E. D. 2

Richard Andrews	674	(elected)
Edna Bolline	673	(elected)
Theodore H. Coward	673	(elected)
Eva Dixon	673	(elected)
Delta Edney	667	(elected)
Beatrice Francis	670	(elected)
Elizabeth Gannon	668	(elected)
Joan Garner	665	(elected)
Arsenio Higuera	670	(elected)
Herbert Holmes	667	(elected)
Mary Hunter	667	(elected)
Annie Johnson	669	(elected)
Stockton Jones	663	(elected)
Antonios Karasis	667	(elected)
Mary Killilea	664	(elected)
Irene McKenzie	662	(elected)
Ida Newkirk	662	(elected)
Ramon Ortiz	664	(elected)
Armando Pozo	664	(elected)
Orlando Puertas	667	(elected)
Juan Quintana	661	(elected)
Eula Robinson	659	(elected)
Annabelle Sheppard	660	(elected)
Grace Tyler	658	(elected)
Jose R. Velazquez	664	(elected)
Edna Watson	659	(elected)

DISTRICT 6

VICE PRESIDENT

Carl Schutt	429	(elected)

BUSINESS AGENT

David Hooko	429	(elected)

ASSEMBLY DELEGATES

Ralph Arredondo	422	(elected)
Edward T. Barrett	418	(elected)
Walter Biddle	417	(elected)
Nathaniel Bowman	419	(elected)
David Brothers	418	(elected)
Elizabeth Burnham	417	(elected)
Catherine DeVere	415	(elected)
Clarion Diaz	417	(elected)
Margaret Galloway	420	(elected)
Margaret Harkness	417	(elected)
John Harris	419	(elected)
Agnes Hughes	419	(elected)
Victor Julien	414	(elected)
Margaret Luke	415	(elected)
Adrienne Lumpkin	417	(elected)
James E. Lyvers	417	(elected)
Marion MacPherson	415	(elected)
Edward A. Phillips	416	(elected)
Albert Sacks	417	(elected)
Ruth Thomas	413	(elected)
Daniel Vazquez	415	(elected)
Richard Weber	411	(elected)

CLUBS

VICE PRESIDENT

Richard Sirch	1,297	(elected)

BUSINESS AGENTS

Joseph Aluffo	1,289	(elected)
Arcadio Arcos	1,262	(elected)
Peter Michaud	1,276	(elected)
George Wilson	1,269	(elected)

ASSEMBLY DELEGATES E. D. 1

Cleo Ahern	597	(elected)
William Boyle	607	(elected)
Alfred Brent	602	(elected)
Jack Cole	606	(elected)
Andrew Costello	605	(elected)
Peter De Stefano	601	(elected)
Joe L. Farrington	599	(elected)
Joseph Filoseta	604	(elected)
Al Fischer	598	(elected)
Albert Martinet	602	(elected)
John Mentelsky	595	(elected)
Gertrude Miller	600	(elected)
Douglas Mitchell	599	(elected)
Katherine Mockler	599	(elected)
Frank Monagas	597	(elected)
Bernardo Moreno	599	(elected)
Jorge Narvaez	591	(elected)
Paul Niedecken	592	(elected)
Mary A. Rafferty	591	(elected)
Henry Senor	592	(elected)
Rupert Smith	591	(elected)
Gerard Sotolongo	599	(elected)
Nathan Suckman	589	(elected)
Joseph Tadler	571	(elected)
Joseph German	58	

ASSEMBLY DELEGATES E. D. 2

Joseph Balint	642	(elected)
Nicholas F. Benzon	639	(elected)
Harriet Callaghan	643	(elected)
Paul G. Ceja	632	(elected)
Angel R. Colon	635	(elected)

Assembly Delegates E. D. 2—(Continued)

Emil Cotton	634	(elected)
John Cruz	637	(elected)
Lucy Demevo	632	(elected)
Frances Feeley	633	(elected)
George Manos	627	(elected)
Wence R. Marti	626	(elected)
Catherine McAuliffe	632	(elected)
Daniel Menendez	632	(elected)
Emil Moguel	621	(elected)
Clarence Moultrie	615	(elected)
Eugene Mouly	614	(elected)
James G. Mulligan	608	(elected)
Patrick O'Gorman	610	(elected)
Fred Podorf	607	(elected)
Harry Rosenblum	606	(elected)
Andrew M. Tablan	606	(elected)
Sotir Titcas	606	(elected)
Mary Whelan	603	(elected)

We, the Election and Objections Committee, hereby certify that the entire election procedure including nomination and balloting were held in strict accordance with the applicable provision of the By-Laws of Local 6 and of the International Constitution.

Fraternally submitted,

HANS COHN—Chairman
GEORGIA KELLY
KING SHERROD
HARRY LEVER
FRANK VELEZ
ANTHONY VALDIVIESO

/ms:oeiu:153

EXHIBIT 40

U. S. Dist. Court, S. D. of N. Y., Jan. 16, 1967

Hotel, Motel & Club Employees Union Local 6
Hotel and Restaurant Employees and Bartenders
Internation Union AFL-CIO [Union Label]

305 West 44th Street
New York, N.Y. 10036

CIrcle 6-8323

Record of Initiations From July, 1965—August, 1963

July, 1965	122	
June	172	
May	399	
April	249	
March	322	
February	261	
January	257	
December, 1964	219	
November	282	
October	370	
September	253	
August	192	3098
July, 1964	252	
June	271	
May	249	
April	293	
March	209	
February	209	
January	205	
December, 1963	168	
November	232	
October	189	
September	206	2639
August	156	
TWO YEAR TOTAL		5737

EXHIBIT 47B

Defendant's By-laws Adopted November 15-16, 1941

* * * *

SECTION 1A. In order to be eligible to run for paid office, a candidate must possess the following qualifications: (1) He must be a member of the union in continuous good standing for a period of one year prior to his nomination. (2) He must be a member of either the Shop Delegates Council or the Executive Board, or else have served at least one term on either body. (3) He must receive at least 20 votes at the meeting of the Shop Delegates Council which makes nominations.

* * * *

EXHIBIT 57

PLAINTIFF'S

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

JAN 17 1967

57 A-X

April 5, 1962

There will be a special Administration Caucus of Dining Room members of District 4 on:

Wednesday, April 11, 1962 at 3:00 P. M.

in the

Nassau Hotel (Rear of Dining Room of Coral Bar)
56 E. 59th Street, New York City

This letter will admit you to the meeting. It is important that you make every effort to attend this meeting.

Fraternally yours,

Lubos Pavlista
LUBOS PAVLISTA

Betty Smith
BETTY SMITH

Arcadio Arcos
ARCADIO ARCOS

Helen Lawless
HELEN LAWLESS

Vito Pitta
VITO PITTA

Dave Hooko
DAVE HOOKO

oeiu:153

EXHIBIT 58

U. S. Dist. Court, S. D. of N. Y., Jan. 17, 1967

*Attendance at Local 6 Assembly Meetings: June 21, 1962 through April 6, 1965**

1. Total Assembly members counted: 381**
2. Total Assembly meetings held: 12
3. Average number of meetings attended per member: 6.41
4. Number of members who were marked absent for two or more successive meetings: 246 (64.5% of the members)
5. Number of members who attended less than half of the meetings (5 meetings or less): 172 (45.1% of the members)
6. Number of members who attended no meetings: 34 (8.9% of the members)

5

* *Source:* Local 6 Record of Attendance at Assembly Meetings (Exhibit 45)

** Members whose Assembly terms were not complete, by reason of death, resignation, appointment as business agent trainees, or otherwise, have not been included in this statistical analysis. The total number of such persons not included is twenty-two.

EXHIBIT 59

Assembly Meetings 1962—1965

	Opening Time	Closing Time	Source
	-*	7:05 p.m.	5
	6:00 p.m.	8:32 p.m.	6
	-*	9:00 p.m.	7
4/17/62	6:00 p.m.	6:40 p.m.	8
6/21/62	6:00 p.m.	8:45 p.m.	9
12/11/62	All Day		10
3/26/63	-*	8:10 p.m.	11
6/25/63	6:00 p.m.	8:20 p.m.	12
10/15/63	All Day		13
1/28/64	6:00 p.m.	8:30 p.m.	14
3/31/64	6:00 p.m.	-*	15
6/23/64	6:00 p.m.	7:50 p.m.	16
10/ 6/64	6:00 p.m.	9:05 p.m.	16B
2/ 2/65	6:00 p.m.	7:50 p.m.	17
3/ 9/65	6:00 p.m.	7:28 p.m.	18
4/ 6/65	6:00 p.m.	8:07 p.m.	19

*Time not indicated in minutes of Assembly meeting.

Source: Minutes of the Assembly meetings for the respective dates: Exhibits 5 through 19

EXHIBIT 60

U. S. Dist. Court, S. D. of N. Y., Jan. 17, 1967

Past Service of Administration Candidates for Assembly in 1965

Total number of candidates: 373

Number who had served in	
1) All 5 previous Assemblies:	5
2) 4 previous Assemblies:	19
3) 3 previous Assemblies:	46
4) 2 previous Assemblies:	88
5) 1 previous Assembly:	87
Total	245
II. Number who had served in Shop Delegates Council as well as prior Assemblies:	13
Number who had served only in the Shop Delegates Council:	2
Total	15
III. Number who had never had any prior service:	126
Percentage of total candidates who had had prior Assembly service	65.6%
Percentage of total candidates who had had prior Shop Delegates Council service only:	0.5%
Percentage with any prior service:	66.1%

Sources: Reports of Election and Objections Committee of Local 6 for Elections on May 19, 1965, May 23, 1962 and May 21, 1959 (Exhibits 34, 22, and 23); Issues of Hotel and Club Voice of Local 6 for February 21, 1956 (Exhibit 26), February 13, 1954 (Exhibit 25), and May 5, 1951 (Exhibit 24); Local 6 Membership Roster as of September 30, 1964 (Exhibit 35) and two lists of shop delegates furnished by Local 6 (Exhibits 42 and 43).

EXHIBIT 61

U. S. Dist. Court, S. D. of N. Y., Jan. 17, 1967

New eligibles created each year in Assembly elections (excluding those no longer in Union but including those who were previously in Shop Delegates Council)

	Number New Eligibles	Total Number Assembly Members Elected
1951	155	256
1954	167	312
1956	121	288
1959	180	408
1962	145	404
Total	768	1,668

Sources: Issues of Hotel and Club Voice of Local 6 for May 5, 1951, February 13, 1954 and February 21, 1956 (Exhibits 24, 25 and 26);

Union Membership Roster as of September 30, 1964 (Exhibit 35)

Reports of Election and Objections Committee for the 1959 and 1962 elections (Exhibits 22 and 23).

EXHIBIT 62

U. S. Dist. Court, S. D. of N. Y., Jan. 17, 1967

New eligibles created each year in Shop Delegates Council (excluding those no longer in Union and those who were later elected to Assembly)

1940	1941	1942
January-June*	January-June*	Whole year: 71
June through September: 11	June through December: 5	
1943	**1944**	**1945**
Whole Year: 51	Whole Year: 26	Whole Year: 60
1946	**1947**	**1948**
January-June*	January through October: 131	Whole Year*
June through December: 59	November-December*	
1949	**1950**	
Whole Year*	Whole Year*	

Total: 414

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* No lists made available for these periods

Sources: Two lists of Shop Delegates Supplied by Local 6 (Exhibits 42 and 43; Local 6 Membership Roster as of September 30, 1964 (Exhibit 35); issues of Hotel and Club Voice of Local 6 for May 5, 1951, February 13, 1954 and February 21, 1956 (Exhibits 24, 25 and 26; Reports of Election and Objections Committee of Local 6 for elections of May 21, 1959 and May 23, 1962 (Exhibits 22 and 23)

EXHIBIT 63

U. S. Dist. Court, S. D. of N. Y., Jan. 17, 1967

Number of eligibles created by election to Executive Board in 1951, 1954 and 1956, excluding those already on record as having served in Assembly or Shop Delegates Council:

	1951	1954	1956
No. elected to Board	58	59	59
No. no longer in union	23	20	14
No. already in Assembly records	25	30	39
No. already in S.D.C. records	5	3	2
New names of eligibles	5	6*	4**

* 4 of these names also appeared in 1951

** 3 of these names also appeared in 1951 and/or 1954

Total elected to Board in 1951-1956: 176

Total new names of eligibles: 8

Sources: Issue of Hotel and Club Voice of Local 6 for June 16, 1951 (Exhibit 24A);

Reports of Election and Objections Committee of Local 6 for elections of May 19, 1954 and May 23, 1956 (Exhibits 20, 21);

Membership Roster of Local 6 as of September 30, 1964 (Exhibit 35) and

Two lists of shop delegates furnished by Local 6 (Exhibits 42 and 43).

EXHIBIT 69

(See charts on following pages)

EXHIBIT 69

Prior Office Holding As a Qualification for Local Union Office, As Provided In The Bylaws of Large Hotel and Restaurant Employees' Local Unions, May 1965 [1]

Local number and location	LM file number	Date of Bylaws	Average membership 1965 [2]	Prior office-holding required [3]	
				Principal or salaried offices only	All Offices
Total	—	125	341,938	—	—
Bylaws with requirement	———	———	———	30	2
1 New York, N. Y.	023483	2/55	11,183		
2 Brooklyn, N. Y.	042775	Undated	1,697		
5 Honolulu, Hawaii	028510	Undated	2,922		
6 New York, N. Y.	028501	11/63	27,228		[4] x
11 New York, N. Y.	012688	2/56	5,300	[5] x	
14 Denver, Colo.	008345	Undated	1,290		
15 New York, N. Y.	016215	Undated	3,840		
17 Los Angeles, Calif.	040384	10/64	3,921		
20 St. Louis, Mo.	039266	2/64	1,248		
21 Rochester, Minn.	036083	6/57	1,891	x	

25	Chicago, Ill.	059104	3/65	3,332		
26	St. Louis, Mo.	018455	2/57	1,872		x
29	Bronx, N. Y.	013479	1/50	1,016	x	
30	San Francisco, Calif.	017060	1963	4,150	[6] x	
31	Oakland, Calif.	042538	7/63	3,610		
33	Seattle, Wash.	028744	7/64	3,126		
34	Boston, Mass.	043719	Undated	2,136		
36	Baltimore, Md.	027970	10/60	1,159		
41	San Francisco, Calif.	019489	1962	3,109		
44	San Francisco, Calif.	007591	1/65	3,762	[7] x	
45	Reno, Nev.	019072	Undated	1,063		
48	San Francisco, Calif.	006322	2/65	4,411		
52	Oakland, Calif.	032625	2/62	1,245		
60	New York, N. Y.	019045	5/60	1,549		
61	Tacoma, Wash.	002749	11/64	2,112		
62	Fresno, Calif.	004339	5/58	1,159		
66	Buffalo, N. Y.	012484	2/60	2,195	x	
70	Brooklyn, N. Y.	013494	6/61	2,396	[8] x	
80	Washington, D. C.	027903	12/63	2,799		
84	Duluth, Minn.	003853	4/58	1,136	x	
88	Chicago, Ill.	020744	10/58	3,018	x	
89	New York, N. Y.	035346	2/52	9,074		
107	Cleveland, Ohio	030267	Undated	953		
109	Newark, N. J.	008197	5/64	1,367	[5] x	
110	San Francisco, Calif.	015620	1/65	2,578		

EXHIBIT 69—(Continued)

Prior Office Holding As a Qualification for Local Union Office, As Provided In The Bylaws of Large Hotel and Restaurant Employees' Local Unions, May 1965 [1]

Local number and location	LM file number	Date of Bylaws	Average membership 1965 [2]	Prior office-holding required [3]	
				Principal or salaried offices only	All Offices
111 Philadelphia, Pa.	035428	Undated	1,155		x
117 Belleville, Ill.	002681	4/60	1,087		
122 Milwaukee, Wis.	026756	4/63	2,779		
126 San Rafael, Calif.	024294	5/65	1,260		
133 Miami, Fla.	047034	5/55	1,872		
138 Philadelphia, Pa.	010904	1/61	1,122		
152 Minneapolis, Minn.	022189	5/58	1,107		
158 Clifton, N. J.	042235	1/57	1,686		x
167 Cleveland, Ohio	027552	9/57	1,172		x
170 Camden, N. J.	016159	Undated	1,930		
177 Cincinnati, Ohio	008247	4/60	1,012		
178 Mt. Vernon, N. Y.	014403	4/62	1,976		x
180 San Jose, Calif.	010125	5/60	4,651		
186 Boston, Mass.	006764	10/58	1,661		
207 Portland, Ore.	043605	6/42	1,917		

209	Washington, D. C.	012197	4/64	1,300	
226	Las Vegas, Nev.	027462	4/56	9,822	x
228	Oakland, Calif.	016294	12/56	2,044	
234	Detroit, Mich.	020861	9/60	4,972	x
237	Pittsburgh, Pa.	033176	1960	3,976	
240	Seattle, Wash.	036819	10/62	3,700	
249	St. Louis, Mo.	016608	10/60	2,122	
255	Miami-Miami Beach, Fla.	001174	Undated	7,299	
266	Kansas City, Mo.	022387	9/57	1,189	
274	Cleveland, Ohio	015333	2/63	1,552 [10]	x
276	Cincinnati, Ohio	006341	4/60	1,082	
277	Boston, Mass.	009994	1/57	2,380	x
278	Chicago, Ill.	009722	Undated	3,026 [11]	x
283	San Francisco, Calif.	025792	5/53	3,280	
284	Los Angeles, Calif.	039150	2/60	2,468	
285	Providence, R. I.	007547	1963	904	
301	Philadelphia, Pa.	013484	Undated	1,528	x
302	New York, N. Y.	002456	1961	4,705 [12]	x
305	Portland, Ore.	006209	4/60	2,206	
325	Brooklyn & Queens, N. Y.	035042	3/53	2,777	
327	Peoria, Ill.	010816	10/59	1,681	
339	Fort Lauderdale, Fla.	024619	Undated	1,086	
340	San Mateo, Calif.	002518	7/59	4,985	
351	Chicago, Ill.	014474	Undated	1,124	
363	Cincinnati, Ohio	020056	5/56	1,157	x

EXHIBIT 69—(Continued)

Prior Office Holding As a Qualification for Local Union Office, As Provided In The Bylaws of Large Hotel and Restaurant Employees' Local Unions, May 1965 [1]

Local number and location	LM file number	Date of Bylaws	Average membership 1965 [2]	Prior office-holding required [3]	
				Principal or salaried offices only	All Offices
393 Sacramento, Calif.	003644	8/62	1,175		
400 Spokane, Wash.	004713	1/60	1,763		
402 San Diego, Calif.	044970	3/60	3,000		
430 St. Louis, Mo.	009417	8/60	2,325	x	
440 Los Angeles, Calif.	042424	2/65	2,829		
450 Cicero, Ill.	022738	3/62	3,008		
451 Everett, Wash.	041945	4/55	1,015		
457 Butte, Mont.	029590	3/54	1,066		
458 Minneapolis, Minn.	034075	6/60	4,008		
468 Los Angeles, Calif.	040363	1964	3,842		
470 Redding, Calif.	037816	3/62	1,051		
471 Albany, N.Y.	043564	12/57	1,301		
473 Washington, D.C.	010334	Undated	2,433	x	
483 Monterey, Calif.	039882	8/58	1,059		
484 Chicago, Ill.	031658	10/63	2,022		

487	Seattle, Wash.	036336	11/62	1,035	
496	Portland, Oreg.	020431	1/57	1,298	
498	Santa Barbara, Calif.	040776	10/61	2,129	
500	San Diego, Calif.	035052	2/56	1,105	
503	Kansas City, Mo.	012074	12/57	1,042	x
508	Atlantic City, N.J.	012624	Undated	2,272	
512	San Pedro, Calif.	022584	4/56	1,492	
531	Pasadena-Glendale, Calif.	005629	2/63	2,523	x
535	Riverside, Calif.	035930	1/63	2,690	
542	Modesto, Calif.	039856	9/61	1,089	
550	Bakersfield, Calif.	036743	1960	1,531	
556	St. Paul, Minn.	043557	1/57	2,713	x
561	Sacramento, Calif.	011852	12/61	1,285	
562	Detroit, Mich.	026557	Undated	1,935	
568	Philadelphia, Pa.	023645	1962	2,692	x
572	Stockton, Calif.	029575	4/62	1,513	
573	Springfield, Ill.	004176	5/56	1,343	
593	Chicago, Ill.	021688	1/62	8,591	
595	Richmond, Calif.	027407	2/63	2,227	
596	Renton and Vicinity, Wash.	004249	4/62	1,437	
610	San Juan, Puerto Rico	043368	1957	2,355	
639	Los Angeles, Calif.	022587	1962	6,384	
655	Kansas City, Mo.	011640	1960	1,050	
665	Minneapolis, Minn.	020189	1952	1,537	
681	Long Beach, Calif.	026006	1962	5,344	

EXHIBIT 69—(Continued)

Prior Office Holding As a Qualification for Local Union Office, As Provided In The Bylaws of Large Hotel and Restaurant Employees' Local Unions, May 1965 [1]

Local number and location	LM file number	Date of Bylaws	Average membership 1965 [2]	Prior office-holding required [3]	
				Principal or salaried offices only	All Offices
686 Long Beach, Calif.	028046	1961	1,097		
694 Sherman Oaks, Calif.	015793	1962	3,604		
703 Santa Maria, Calif.	027604	4/56	1,139		
705 Detroit, Mich.	009930	8/58	9,082	x	
765 Los Angeles, Calif.	040377	1962	1,944		
770 Santa Rosa, Calif.	026750	1/62	917	x	
781 Washington, D.C.	004808	11/61	1,240		
814 Santa Monica, Calif.	037934	4/57	4,852		
823 Hayward, Calif.	004114	1/65	2,886		
878 Anchorage, Alaska	001758	11/62	1,069		

[1] The *Officers' Report and Daily Convention Proceedings* of the Thirty-Sixth General Convention of the Hotel and Restaurant Employees and Bartenders International Union (AFL-CIO), held in May 1966, shows that the average membership in 1965 for the Union's 485 locals in the United States totaled 435,869, which gives an arithmetic mean average of 899 members per local. This table includes all the locals above the group average in membership size that have filed bylaws with the Department of Labor; these 125 locals account for approximately 78 percent of the Union's total membership in the United States. The bylaws analyzed are those in effect as of May 1965, according to reports filed with the Department of Labor.

[2] Source: *Officers' Report and Daily Convention Proceedings*, Thirty-Sixth General Convention, Hotel and Restaurant Employees and Bartenders International Union (AFL-CIO), May 1966, pp. 7-15.

[3] Unless otherwise indicated, the prior office-holding requirement is one year or one term on the Local Executive Board.

[4] Bylaws specify that a candidate ". . . must be a member of either the Assembly or the Executive Board, or else, at some time in the past, have served at least one term on either the Executive Board, the Assembly, or the old Shop Delegates Council." (Article IV, Section 7a.)

[5] Time in certain of the local's elective positions also satisfies the requirement.

[6] Time as a delegate to the Union Labor Council or the Local Joint Executive Board also satisfies the requirement.

[7] One year as a delegate to the Central Labor Council also satisfies the requirement.

[8] Three complete, consecutive years as the local's Business Representative also satisfies the requirement.

[9] Two full years as a member of the Local Executive Board are required.

[10] Working as an officer or an organizer of the Union also satisfies the requirement.

[11] Working as an officer of the Union also satisfies the requirement.

[12] One term as an officer or as a member of the Trade Board or of the General Council of the Union satisfies the requirement.

LMSA/OLMPD
December 1966

EXHIBIT 70

Prior Office Holding as a Qualification for National Union Office, as Provided in the Constitutions of National Unions with 20,000 to 40,000 Members, May 1965 [1]

National union [2]	Date of constitution	Number of members [3]	Method of electing national union officers		Only convention delegates eligible for national office	Prior office-holding required
			Membership referendum	Delegate vote at convention		
Total	23	679,777	3	20	2	—
Constitutions with requirement	—	—	—	—	—	0
Aluminum Workers	5/63	24,900		x		No
Brick & Clay Workers	11/63	22,000		x		No
Cement Workers	10/62	35,907		x	x	No
Distillery Workers	1962	35,000		x		No
Furniture Workers	5/64	37,500		x		No
Garment Workers	8/62	26,000		x		No
Glass & Ceramic Workers	9/64	38,058	x			No
Glass Workers, Flint	9/63	31,239		x	x	No
Grain Millers	7/63	30,000		x		No
Hatters	6/62	40,000		x		No
Insurance Workers	5/63	21,000		x		No
Laundry & Dry Cleaning	5/62	22,058		x		No
Leather Goods Workers	6/63	37,000		x		No
Marine & Shipbuilding Workers	10/64	22,000		x		No
Mechanics—MESA	9/62	38,100		[4] x		No

Newspaper Guild	7/64	31,684	[5] x			No
Pulp & Paper, Western (Ind.)	3/65	21,000	[5] x			No
Railway Conductors (Ind.)	8/62	20,000			x	No
Roofers	2/64	22,000			x	No
Shoe Workers, Boot &	7/61	40,000			x	No
Telegraphers, Commercial	10/63	28,650			x	No
Tobacco Workers	1/65	33,681			x	No
Toy Workers	5/60	22,000			x	No

[1] This table includes all national unions covered by the Labor-Management Reporting and Disclosure Act having 20,000 to 40,000 members as listed in the *Directory of National and International Labor Unions in the United States, 1965*, Bureau of Labor Statistics, Bulletin No. 1493, April 1966. The constitutions analyzed are those in effect as of May 1965, according to reports filed with the Department of Labor.

[2] All national unions not identified as Independent (Ind.) are affiliated with the AFL-CIO. Twenty-two of the unions listed are identified by short-form titles as used in the *Register of Reporting Labor Organizations*, Labor-Management Services Administration, January 1, 1964; complete titles are given on pp. ix-xviii of that publication. The full title for Pulp & Paper, Western (Ind.) is the Association of Western Pulp and Paper Workers (LM #000305); this organization was formed in May 1964.

[3] Source: *Directory of National and International Labor Unions in the United States, 1965*, Bureau of Labor Statistics, Bulletin No. 1493, April 1966.

[4] Nominations for international officers can be made by locals and by convention delegates.

[5] International officers are nominated at the convention but are elected by referendum vote of all members.

EXHIBIT 71

Prior Office-Holding as a Qualification for Local Union Office, as Provided in National Union Constitutions and Local Bylaws Governing Selected Large Local Unions, May 1965 [1]

Local union affiliation, number and location [2]	LM file number	Total receipts, 1964 (000)	Estimated local union membership, 1965 [3]	Date of constitution or bylaws	Prior office-holding required
Total number of locals	66	—	—	—	—
Locals with requirement	—	—	—	—	7
Auto Workers	149			8/64	
12, Toledo, Ohio	7160	$1,189	17,100	12/60	No
22, Detroit, Michigan	30246	1,388	7,200	1956	No
25, St. Louis, Mo.	20950	1,836	7,500	3/65	No
32, Cleveland, Ohio	21296	1,198	3,100	1/59	No
174, Detroit, Mich.	39071	1,148	19,700	2/60	No
235, Hamtramck, Mich.	19459	1,069	6,300	3/61	No
594, Pontiac, Michigan	10772	1,261	9,500	1965	No
600, Dearborn, Mich.	13030	1,898	32,400	11/60	No
652, Lansing, Mich.	19466	2,099	11,000	3/61	No
653, Pontiac Mich.	6151	2,492	15,100	12/64	No
659, Flint, Mich.	6333	1,404	21,000	12/62	No
668, Saginaw, Mich.	19870	1,035	7,500	4/60	No
719, Brookfield, Ill.	12621	1,188	7,600	1963	No

735, Belleville, Mich.	12615	1,097	5,500	2/64	No
887, Los Angeles, Calif.	40943	1,199	19,500	4/64	No
974, East Peoria, Ill.	42814	1,011	16,900	3/62	No
1005, Cleveland, Ohio	9600	1,358	7,300	1962	No
1364, Fremont, Calif	60231	1,234	4,700	Undated	No
Building Service Employees	137			5/64	
1, Chicago, Ill.	23715	1,838	[4] 9,100	9/60	No
32B, New York, N.Y.	11661	2,676	[4] 40,000	11/58	No
399, Los Angeles, Calif.	35687	1,077	[4] 13,200	6/53	No
Electrical Workers-IBEW	116			9/62	
3, New York, N.Y.	6367	3,209	[5] 30,100	10/62	No
11, Los Angeles, Calif.	12121	1,853	[5] 9,300	1965	No
134, Chicago, Ill.	35399	3,138	[5] 15,600	8/61	No
1031, Chicago, Ill.	7530	1,106	[5] 22,200	2/63	No
Engineers, Operating	159			4/64	
3, San Francisco, Calif.	35651	3,575	30,700	9/64	No
12, Los Angeles, Calif.	7156	3,463	25,500	4/65	No
18, Cleveland, Ohio	39040	1,138	11,600	6/63	No
150, Chicago, Ill.	31860	1,261	8,700	10/64	No
324, Detroit, Mich.	19088	1,070	8,600	11/63	No
Garment Workers, Ladies'	105			7/62	
22, New York, N.Y.	41720	1,065	[6] 14,900	(7)	Yes
23-25, New York, N.Y.	43961	1,753	[6] 14,400	(7)	Yes
62, New York, N.Y.	43970	1,352	[6] 14,800	(7)	Yes
89, New York, N.Y.	41712	1,454	[6] 20,900	(7)	Yes
91, New York, N.Y.	43955	1,095	[6] 10,400	(7)	Yes
155, Brooklyn, N.Y.	43959	1,196	[6] 11,600	(7)	Yes

EXHIBIT 71—(Continued)

Prior Office-Holding as a Qualification for Local Union Office, as Provided in National Union Constitutions and Local Bylaws Governing Selected Large Local Unions, May 1965 [1]

Local union affiliation, number and location [2]	LM file number	Total receipts, 1964 (000)	Estimated local union membership, 1965 [3]	Date of constitution or bylaws	Prior office-holding required
Hod Carriers [8]	131			10/61	
300, Los Angeles, Calif.	24909	$1,450	19,800	3/60	No
Hotel & Restaurant Employees	31			5/61	
1, New York, N.Y.	23483	1,874	[9] 11,200	2/55	No
6, New York, N.Y.	28501	2,057	[9] 27,200	11/63	Yes
Lithographers & Photoengravers	219			9/64	
1-P, New York, N.Y.	2652	2,102	([10])	6/54	No
5-P, Chicago, Ill.	9389	1,667	([10])	1965	No
Machinists	107			1/65	
701, Chicago, Ill.	16910	1,082	12,000	([7])	No
Musicians	207			9/64	
4, Cleveland, Ohio	30803	1,714	[11] 3,100	1/60	No
47, Hollywood, Calif.	12112	2,553	[11] 14,700	3/64	No
802, New York, N.Y.	10790	1,782	[11] 28,100	9/63	No

Printing Pressmen	59			10/64	
2, New York, N.Y.	5522	1,429	2,500	4/57	No
Retail Clerks	56			7/63	
324, Buena Park, Calif.	22620	1,366	15,800	1965	No
770, Los Angeles, Calif.	27566	3,290	23,300	1965	No
876, Detroit, Mich.	39461	1,221	21,800	Undated	No
1500, New York, N.Y.	22675	2,373	13,800	Undated	No
Sheet Metal Workers	73			10/62	
73, Chicago, Ill.	36283	1,159	4,880	1965	No
Stage Motion Picture Operators	172			7/64	
1, New York, N.Y.	44938	1,059	([10])	3/59	No
Teamsters (Ind.)	93			12/63	
107, Philadelphia, Pa.	33820	1,021	12,200	([7])	No
135, Indianapolis, Ind.	9836	1,080	13,300	([7])	No
299, Detroit, Mich.	34784	1,255	15,900	12/63	No
688, St. Louis, Mo.	25471	1,144	12,200	1963	No
705, Chicago, Ill.	43508	1,878	23,100	11/63	No
710, Chicago, Ill.	28039	1,396	17,500	6/62	No
743, Chicago, Ill.	34094	1,761	18,600	7/62	No
Transport Workers	218			10/61	
100, New York, N.Y.	3424	1,792	32,500	Undated	No

EXHIBIT 71—(Continued)

Prior Office-Holding as a Qualification for Local Union Office, as Provided in National Union Constitutions and Local Bylaws Governing Selected Large Local Unions, May 1965 [1]

Local union affiliation, number and location [2]	LM file number	Total receipts, 1964 (000)	Estimated local union membership, 1965 [3]	Date of constitution or bylaws	Prior office-holding required
Typographical	27			1/65	
1, New York, N.Y.[12]	35319	$1,689	[13] 25,000	9/64	No
6, New York, N.Y.	3105	8,391	[13] 11,600	2/65	No
16, Chicago, Ill.	26577	4,607	[13] 5,400	1960	No
21, San Francisco, Calif.	35048	2,427	[13] 2,300	5/65	No
101, Washington, D.C.	13089	1,419	[13] 4,200	1/64	No
174, Los Angeles, Calif.	22470	1,041	[13] 2,300	3/63	No

[1] This table includes all local unions reporting total receipts of $1 million or more to the Department of Labor in 1964 under the provisions of the Labor-Management Reporting and Disclosure Act. Total receipts was used as the criterion for selecting large locals for analysis because actual membership figures are not reported to the Department, and total receipts provide a general indication of membership size. Total receipts reported for 1964 was used because 1964 is the latest year for which such data have been tabulated by the Department. The constitutions and bylaws analyzed are those in effect in May 1965, according to reports filed with the Department of Labor.

[2] National unions are identified by short-form titles as used in the *Register of Reporting Labor Organizations*, Labor-Management Services Administration, January 1, 1964; complete titles are shown on pages ix-xviii of that publication. National unions are affiliated with the AFL-CIO, unless identified as Independent (Ind.).

[3] Local union membership estimates, unless otherwise footnoted, are based on local union financial data. The majority of estimates were derived by dividing the local's annual dues rate into the total amount of dues receipts the local reported to the Department of Labor for 1965. Where an annual dues rate could not be ascertained, a membership estimate was derived by dividing the annual per capita tax rate specified in the national constitution into the total amount of per capita tax payments reported by the local for 1965.

[4] Source: *1964 Official Proceedings 13th General Convention,* Building Service Employees' International Union, May 1964, pages 121, 123 and 130.

[5] Source: *Proceedings of the 27th Convention,* International Brotherhood of Electrical Workers, September 1962, pages 428, 429, 435 and 469.

[6] Source: *Report and Record, Thirty-Second Convention,* International Ladies' Garment Workers' Union, May 1965, membership as of January 1965, page 202.

[7] No local bylaws filed; local is governed by the national constitution.

[8] Name changed to Laborers' International Union of North America, effective September 1965.

[9] Source: *Officers' Report & Daily Convention Proceedings, 36th General Convention,* Hotel and Restaurant Employees and Bartenders International Union, May 1966, average membership 1965, page 7.

[10] Membership cannot be estimated from information filed with the Department of Labor.

[11] Source: *Official Proceedings, Sixty-Eighth Annual Convention,* American Federation of Musicians of the United States and Canada, June 1965, pages 8, 10 and 28.

[12] Affiliated with the Typographical Union in March 1965; formerly with the Lithographers.

[13] Source: *Annual Reports of Officers and Proceedings of 107th Convention,* International Typographical Union, August 1965, membership as of May 1965, pages 7s, 34s and 35s.

EXHIBIT 72

Prior Office-Holding as a Qualification for Local Union Office as Provided in National Union Constitutions, May 1965 [1]

National union [2]	Date of constitution	Number of members [3] (000)	Number of locals filing LM-1 reports [4]	Prior office-holding required
Total	72	15,774	39,862	—
Constitutions with requirement	—	—	—	1
Actors & Artists	3/63	61	42	No
Auto Workers	3/64	1,168	1,187	No
Bakery & Confectionery Workers	8/62	82	131	No
Bakery & Confectionery Workers (Ind.)	1/62	62	128	No
Barbers	1/64	73	792	No
Boilermakers	5/65	125	395	No
Bookbinders	1/65	60	200	No
Brewery Workers	8/63	60	220	No
Bricklayers	9/64	135	877	No
Building Service Employees	5/64	320	214	No
Carpenters	1/63	760	2,486	No
Chemical Workers	10/64	85	294	No
Clothing Workers	5/64	377	650	No
Communications Workers	6/64	294	785	No
District 50-UMW (Ind.)	4/65	210	1,557	No

Electrical Workers-IBEW	9/62	806	1,485	No
Electrical Workers-IUE	1/65	271	489	No
Electrical Workers-UE (Ind.)	12/64	165	112	No
Engineers, Operating	4/64	311	283	No
Firemen & Oilers	7/61	43	561	No
Garment Workers, Ladies'	7/62	442	423	Yes
Glass Bottle Blowers	5/65	70	235	No
Hod Carriers	10/61	432	849	No
Hotel & Restaurant Employees	5/61	444	516	No
Industrial Workers, Allied	9/63	69	325	No
Iron Workers	1/65	143	291	No
Laundry Workers (Ind.)	5/65	65	72	No
Lithographers & Photoengravers	9/64	50	170	No
Locomotive Engineers (Ind.)	10/62	40	769	No
Locomotive Firemen	1/64	55	80[illegible]	No
Longshoremen	8/63	50	309	No
Longshoremen & Warehousemen (Ind.)	4/63	60	64	No
Machinists	1/65	808	1,735	No
Maintenance of Way Employes	7/62	121	1,116	No
Maritime	1/65	52	4	No
Meat Cutters	7/64	341	352	No
Mine, Mill & Smelter Workers (Ind.)	10/62	75	87	No
Mine Workers, United (Ind.)	10/64	245	1,100	No
Molders	7/61	50	338	No
Musicians	9/64	275	605	No
Office Employes	6/62	65	182	No
Oil, Chemical & Atomic Workers	8/63	162	509	No
Packinghouse, Food & Allied Workers	5/64	145	404	No
Painters	1/65	199	1,139	No
Papermakers & Paperworkers	9/63	133	658	No

EXHIBIT 72—Continued

Prior Office-Holding as a Qualification for Local Union Office as Provided in National Union Constitutions, May 1965 [1]

National union [2]	Date of constitution	Number of members [3] (000)	Number of locals filing LM-1 reports [4]	Prior office-holding required
Plasterers	11/64	68	461	No
Plumbers	1/62	256	653	No
Printing Pressmen	10/64	115	680	No
Pulp, Sulphite & Paper Mill Workers	9/62	176	601	No
Railroad Trainmen	1/65	185	989	No
Railway Carmen	9/63	121	759	No
Railway & Steamship Clerks	8/64	270	1,471	No
Retail Clerks	7/63	427	266	No
Retail, Wholesale	5/62	167	239	No
Rubber Workers	11/64	164	410	No
Seafarers	3/63	80	67	No
Sheet Metal Workers	10/62	100	441	No
Shoe Workers	5/64	51	138	No
Stage Motion Picture Operators	7/64	60	793	No
State County Municipal Employees	5/65	235	25	No
Steelworkers	9/64	965	2,796	No
Teachers	10/64	100	4	No
Teamsters (Ind.)	12/63	1,442	808	No
Telephone Unions, Alliance (Ind.)	6/59	72	4	No
Textile Workers-TWU	6/64	177	543	No

Textile Workers-UTW	9/64	44	184	No
Transit Union	1/64	133	295	No
Transport Workers	10/61	135	102	No
Typographical	1/65	113	709	No
Upholsterers	9/63	55	165	No
Utility Workers	5/65	71	155	No
Woodworkers	11/63	93	164	No

[1] This table includes all national unions covered by the Labor-Management Reporting and Disclosure Act having more than 40,000 members as listed in the *Directory of National and International Labor Unions in the United States, 1965*, Bureau of Labor Statistics, Bulletin No. 1493, April 1966, and having one or more affiliated local unions filing under the LMRDA. The constitutions analyzed are those in effect in May 1965, according to reports filed with the Department of Labor.

[2] National unions are identified by short-form titles as used in the *Register of Reporting Labor Organizations*, Labor-Management Services Administration, January 1, 1964; complete titles are shown on pp. ix-xviii of that publication. National unions are affiliated with the AFL-CIO, unless identified as Independent (Ind.).

[3] Source: *Directory of National and International Labor Unions in the United States, 1965*, Bureau of Labor Statistics, Bulletin No. 1493, April 1966. The 72 national unions included in this table account for approximately 88 percent of the membership of all national unions reported in Bulletin No. 1493.

[4] Number of local union affiliates filing a Labor Organization Information Report (LM-1) with the Department of Labor as of August 1965. The total number of locals listed in this table is approximately 82 percent of the total number of locals reporting to the Department of Labor as of August 1965.

[5] Article 5, section 19 (c) provides that "No candidate for a paid office or position in a L.U., J.B. or D.C. who has not previously served at least one year as a paid officer or holder of a position shall be qualified for such office or positions, unless he or she shall first have completed a course of training conducted and approved by the Educational Department of the I.L.G.W.U. in localities where such courses are available."

[6] Name changed to Laborers' International Union of North America, effective September 1965.

EXHIBIT 73

Deposition of Hans Cohn (Excerpts)

[fol. 2] * * *

Examination by Mr. Kushner:

Q Mr. Cohn, are you a member of Local 6 of the Hotel, Motel and Club Employees Union? A I am.

Q Now, from now on, for the sake of convenience, I will refer to union as Local 6, and you can too, if you wish. A Yes, sir.

Q How long have you been a member of Local 6? [fol. 3] A Since 1943 or '44.

Q Have you held any paid offices in Local 6? A As an officer?

Q Have you served as general officer or vice president or business agent? A No.

Q Have you been a member continuously since 1944? A Yes.

Q Have you ever been a member of the Assembly of Local 6? A I don't think so. No.

Q Have you ever been a member of the Shop Delegates Council of Local 6? A Yes. Wait. Let me correct this.

Mr. Lurie: May I clarify it?

Hans, in 1951 the Shop Delegates Council was changed by a convention into an Assembly, and the members of that convention were also automatically members of the first Assembly.

Were you a delegate to that first convention?

The Witness: Yes.

Mr. Lurie: So that as a consequence you were a mem- [fol. 4] ber of the Assembly in the early years of the Assembly; is that right?

The Witness: Yes.

Mr. Lurie: Now, were you also a member of the Assembly in 1954 to 1956, if you remember?

The Witness: I don't remember that far back.

Mr. Lurie: But since 1956, in any event, you have not been a member of the Assembly?

The Witness: No, definitely not.

Mr. Lurie: Those are the facts.

Q. Let me get this straight once more.

When were you a member of the Shop Delegates Council? A. Well, I don't remember that far back. Can I say something off the record?

Q No. Say it on the record. A It's like this. Years ago, when the Shop Delegates Council existed, department delegates were automatically members of the Shop Delegates Council, and I don't remember whether I was a delegate in my department when the Shop Delegates Council still existed. This is what confuses me a little bit.

Q Do you recall that you were a member of the Shop Delegates Council? A I am not sure.

* * * *

[fol. 8] * * *

Q Now, were you a member of the Election and Objections Committee of Local 6 in any of these elections? A Yes.

Q What elections were those? A As far back as 1951, if I am not mistaken, I think that's when it was.

The Witness: That was Dave Herman's first election, right?

Mr. Lurie: Yes.

[fol. 9]

A (Continuing) As far back as 1951.

Q Were you a chairman of the Election and Objections Committee for any of the elections? A I was chairman of the Election and Objections Committee on all the elections except 1951.

Q Do you recall who was chairman in 1951? A I don't remember the name.

* * * *

[fol. 25] * * *

Q Is it correct that in the 1956 election the only department in which the union members voted at election was the banquet department? A The only place where the union members voted?

[fol. 26] Q Yes. A No.

Q Let me point out a paragraph on page 1 of Plaintiff's Exhibit 21 * * * which states:

> "On May 15, 1956, the Election and Objections Committee reported to the Executive Board and recommended that, in view of the fact that the only department having a contest was the banquet department, that voting should be confined to this department. The Executive Board agreed with that recommendation."

A Then if these are the minutes, then my statement before that was wrong. I am sorry.

Q So that there was an election in the banquet department only in 1956? A Yes.

Q Now, would you turn to the banquet department results in Plaintiff's Exhibit 21 * * *. That's page 7. You will note that it states at the top:

> "The following are the results of balloting in the banquet department on May 16, 1956 in the Gertrude Lane Auditorium. For president, David Herman, 671 votes, elected."

And Mr. Herman was unopposed; is that correct? A [fol. 27] Correct.

Q "For secretary-treasurer, James Marley, 653 votes, elected." And Mr. Marley was unopposed; is that right? A Yes.

Q "For general organizer, Beatrice Bentz, 650 votes, elected." Is that right? A Yes.

Q Miss Bentz was unopposed? A That's right.

Q "For recording secretary, Scotty Eckford, 646 votes, elected." And Mr. Eckford was unopposed, right? A Yes.

Q "For vice president, John Dubois, 685 votes, elected." And Mr. Dubois was unopposed, is that correct? A Yes, sir.

Q "For business agent, William Janover, 660 votes, elected." And Mr. Janover was unopposed; is that correct? A Yes, sir.

Q And then it lists the Executive Board contest in the [fol. 28] banquet department where there is opposition; is that right? A Yes, sir.

Q And the executive committee election in the banquet department in which there was opposition; is that correct? A Yes.

Q Now, do you recall the reasons for placing the names of the nominees for president, secretary-treasurer, general organizers, recording secretary, vice president and business agent on the ballot in the banquet department when they were unopposed? A I don't remember the reason.

* * * *

[fol. 35] * * *

Q Now I am going to ask you a series of questions about these minutes starting with the first meeting of the Election and Objections Committee for March 18, 1965.

Now, referring to the minutes of the March 18, 1965 election in Plaintiff's Exhibit 27 * * * the second paragraph on page 1 states that:

> "The Committee approved the following rules and regulations which will be read to the Assembly on April 6 and at all district nomination meetings,"

and then the rules are set forth.

Now, were these the rules which were read to the Assembly and at all district nominations? A They were, yes.

Q Now, you will note that Rule 1B states:

> "In order to be eligible for nomination as an officer a candidate must possess the following qualifications: He must be a member of either the Assembly or the Executive Board, or at some time in the past [fol. 36] had served at least one term on either the Executive Board, Assembly or the old Shop Delegates Council."

Where did you get that rule from? A We established most of those rules—all those rules in accordance with the bylaws of Local 6.

Mr. Lurie: We will stipulate for the record, Mr. Kushner, that these rules as printed in the bylaws and as read to the Assembly were not a true reflection of the constitution and bylaws inasmuch as through some oversight the erratum, which changed the word "term" to "year" was overlooked, and although the bylaws provide that they must have served in the past at least one year in the Executive Board or the Shop Delegates Council of the Assembly, the rules as published refer to one term.

Q Now, if you refer to Rule 7 on page 2 of the minutes of the March 18, 1965 minutes, Plaintiff's Exhibit 27 * * * it states:

> "In order to guarantee that a secret ballot by machine takes place in accordance with the bylaws of Local 6, the Election Committee is empowered by the Assembly to set up election districts where it is necessary within a district."

Now, did the Committee set up election districts? A [fol. 37] Yes, we did.

Q Who specifically did that? A These rules were read—were drawn up by us, by the Committee, and were then read to the Assembly, which approved it.

Q And were the election districts drawn up? A At one of the meetings of our Committee in the beginning.

Q Do you recall which meeting? A Probably the next meeting.

* * * *

[fol. 53] * * *

Q You have heard Mr. Lurie state previously in this examination, haven't you, that the rule as to the eligibility which stated that a member had to serve for one term on the Assembly or Executive Board or Shop Delegates Council was in error and it should have been one year? A One year, yes, sir.

Q But you weren't aware of this prior to the May [fol. 54] 1965 election? A No, sir. That was an unintentional error.

Q It was an unintentional error? A That's right.

Q And you enforced the rule which conditions eligibility upon service of one term? A That's right, sir.

Q Now, is it correct that the meetings at which you ruled certain people ineligible to run occurred on April 23rd and April 26th, 1965? A Yes.

Q If you examine the letter dated May 3, 1965, which is attached to the minutes of the May 3rd meeting and it's addressed to Mr. Adolphus M. Mims from you— A Yes, sir.

Q —is this a copy of a letter which you in fact sent to Mr. Mims? A That is correct.

Q Now, the letter lists people who were ruled eligible or ineligible to run for certain positions; is that correct? A Yes, sir.

Q If you will note page 2 where there is a list of [fol. 55] people ruled ineligible, I ask you when and at which meeting Kenneth Davis and Joseph De Jesus were ruled ineligible?

Mr. Lurie: You will find De Jesus, Mr. Kushner, at the top of page 4 of the meeting of April 23rd.

A The minutes, Mr. Kushner, show De Jesus on the April 23rd meeting, and I don't remember the other fellow you are asking for.

Q Kenneth Davis. A It escapes my memory.

Q You don't see him on the April 26th meeting? A No, sir.

Q You don't recall when he was ruled ineligible? A No.

Q Do you recall the reason he was ruled ineligible? A No, sir.

* * * *

[fol. 56] * * *

Examination by Mr. Lurie:

Q Mr. Cohn, there was a meeting, was there not, at which all candidates about whom there was any question were called to attend by the Election and Objections Committee? A That's right.

Q And did each of these candidates appear personally before the Election and Objections Committee? A They did.

* * * *

[fol. 57] * * *

Q And some were denied the right to run because they had not been prior members of the Assembly or the Shop Delegates Council; is that right? A That's right.

Q Did you inform them that that was the reason you [fol. 58] found that they were not eligible to run? A We asked them first if they were ever members of the Assembly, and when they said that they were not, which our records indicated, we then told them that they were not eligible to run for that reason.

Mr. Lurie: Read back the last answer.

(Answer read.)

Q If they had said that they had been members of the Assembly or the Shop Delegates Council or the old Executive Board, what would you have done? A We would have rechecked the records and if it didn't show anything, we would have taken their word for it and put them on the ballot.

* * * *

EXHIBIT B

THE MEMBERSHIP VOICE

———TO ALL LOCAL 6 MEMBERS———

IF YOU ARE INTERESTED IN ELECTIONS WITH OPPOSITION AND IN PUTTING AN END TO THE LOCAL 6 ONE-PARTY SYSTEM, COME TO OUR WEEKLY CAUCUS AND ELECTION FORUMS.

YOUR PARTICIPATION IS NECESSARY TO INITIATE THE OPERATION OF A TWO-PARTY SYSTEM.

HELP SUPPORT A NEW SLATE TO OPPOSE THE PRESENT ADMINISTRATION.

TIME: EVERY MON, TUE, & WED BEGINNING MARCH 29, 1965 UNTIL ELECTION TIME FROM 3 P.M. TO 9 P.M.

PLACE: HOTEL WOODSTOCK 127 WEST 43rd STREET, N.Y.C.

[IF YOU ARE SATISFIED WITH YOUR PRESENT CONDITIONS, *DO NOT COME.*]

EXHIBIT C

(Excerpts)

THE MEMBERSHIP PARTY OF LOCAL 6 DEDICATED TO GIVING THE UNION BACK TO THE MEMBERS

* * * * *

Fellow Members:

Come And Meet Your Candidates At Our Campaign Headquarters, Hotel Woodstock, 127 West 43rd Street, N. Y. C. Every Mon., Tues., & Wed., From 3 p.m. to 9 p.m.

* * * * *

SUMMARY OF THE MEMBERSHIP PARTY'S PLATFORM

1. We will negotiate from a position of strength.
2. We will hire the best labor lawyers that money can buy.
3. We will direct but shall be guided by the wishes of the membership.
4. A general membership meeting shall be held for the acceptance or rejection of the contract offered.
5. We will insist upon contractual severance pay for all lay-offs whether temporary or permanent.
6. A total review of the hiring procedures, promotions, and job control. We will also insist that management will hire the first qualified worker referred by the joint hiring office regardless of race, creed, or national origin.
7. All representatives of the hotel workers, from delegates in the shops to the president of our local shall be elected and not appointed. We shall not recognize Shop-Chairmen appointed by the Hotel Trade Council.
8. Total revision of our Arbitration Machinery.
9. Removal of all restrictions in our by-laws which prevent members in good standing from running for office.

10. Elected paid representatives for each craft to work in conjunction with the officers of each district on all major problems concerning their particular craft.
11. Job classifications will be strictly enforced at all times. Any member working out of his classification due to emergencies, will be paid at the highest rate of pay.
12. We will negotiate to institute an accumulative sick leave clause.
13. We will negotiate to guarantee a 5-day week for all full-time workers and we will induce management to place all casual workers on a permanent part-time basis to insure full union benefits.
14. All duly elected departmental shop delegates shall be included in all day to day bargaining negotiations with management and Union Officers, on all grievances in their respective departments. Total elimination of telephone or private negotiations between officers and management only.
15. A rescheduling of all officers on duty to insure seven day coverage on all union matters.
16. We will negotiate a living wage for all members. We will insist upon a uniform distribution of meals for all Local 6 members.

MEMBERSHIP PARTY.

* * * *

General Officers

	President	Armando Carballo	Biltmore
	Sec.-Treas.	Robert Bruce	Park Sheraton
	Gen. Org.	Charles Salavarria	Savoy-Plaza
	Rec. Sec.	Adolphus M. Mims	Banquet Dept.
District	Vice-Pres.	Robert Vilches	Sheraton-Atlantic
1			
	Vice-Pres.	Gene Quara	Roosevelt
	Bus. Agent	Armand Muller	Roosevelt
2	Bus. Agent	Victor Manello	Roosevelt
	Vice-Pres.	Ken Davis	Berkshire
3	Bus. Agent		
	Bus. Agent		
	Vice-Pres.	Rogelio A. Aguiar, Jr.	St. Regis
4	Bus. Agent	Jacques Gabay	Banquet Dept.
	Vice-Pres.	Joseph Rosario	Park Sheraton
5	Bus. Agent	Joseph De Jesus	Americana
	Bus. Agent	Anthony Kemmel	Americana
6	Vice-Pres.	Michael Demetroules	Banquet Dept.
	Bus. Agent	George Kyro	Banquet Dept.
	Bus. Agent	Robert Pugh	Banquet Dept.

Due to the unreasonable restriction in the by-laws the present Administration has eliminated all opposition and has been elected unopposed for the past 15 years.

The "B" slate is running in spite of these restrictions and is requesting the Department of Labor to rule on the validity of these restrictive by-laws. We urge you, though some of our names do not appear on the ballot, to vote row B all the way because we are all running all the way.

* * * * *

EXHIBIT D

Section 7 of Article IV of the Local 6 By-Laws has been amended to read as follows:

"Section 7, (a) With respect to membership in the Union. In order to be eligible for nomination as an officer or Delegate to the Hotel and Motel Trades Council, a candidate must possess the following qualifications:

1. He must be a member of the Union in continuous good standing for a period of two (2) years immediately preceding his nomination;
2. He must have served as a member of either the Assembly or the Executive Board or he must have been a department delegate, or in the alternative, he must have been a member of the Union for five (5) years. In order to be eligible for nomination as a member of the Executive Board, as a Delegate to the Assembly, or as a department delegate, a candidate must be a member of the Union in continuous good standing for a period of at least one (1) year immediately preceding his nomination."

EXHIBIT E

Year of Election	Total Membership [1]	Votes Cast
1951	26,630	12,705
1954	25,678	14,618
1956	26,489	*
1959	26,974	11,214
1962	26,340	7,131
1965	27,354	11,254

[1] This figure represents the total membership in the Union as of the month preceding the election.

* In 1956, the Election and Objections Committee recommended to the Executive Board and the Executive Board approved the following:

> "Because there is no contest in any department except the Banquet Department and taking into consideration the 1955 negotiations and the fact that in February of this year, almost 15,000 members voted in a Convention Election, the Committee recommends the following for your approval:
>
> 1. That balloting take place only for the Banquet Department, which is the only Department having a contest."

* * * *

EXHIBIT 55 ID.

U. S. Dist. Court, S. D. of N. Y., Jan. 17, 1967
Nov. 8, 1965

Mr. Edward S. Miller, General President
Hotel & Restaurant Employees &
Bartenders International Union
6 East Fourth Street
Cincinnati, Ohio

Dear Mr. Miller:

Under the authority of Section 601 of the Labor-Management Reporting and Disclosure Act and pursuant to a complaint filed, our New York office has conducted an investigation into the last general election conducted by Local 6, Hotel, Motel & Club Employees Union on May 19, 1965. Section 402(b) states, in part, ". . . if he (The Secretary of Labor) finds probable cause to believe that a violation of this title (Title IV) has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization . . ."

The investigation thus far conducted establishes probable cause to believe that the election conducted by Local 6 violated Title IV in the following particulars:

1) Members in good standing were denied the right to be candidates and hold office through the imposition of unreasonable standards, in violation of Section 401(c).

2) All officers of Local 6 were not elected by secret ballot among the members in good standing, in violation of Section 401(a).

3) Members of Local 6 were not given a reasonable opportunity for the nomination of candidates, in violation of Section 401(c).

4) Adequate safeguards for a fair election were not provided, in violatoin of Section 401(c).

It is the policy of this office in appropriate cases involving violations of Title IV to advise the parent union involved of the preliminary results of our investigation in order that an opportunity is presented to the parent union to communicate any additional evidence bearing on the violations or on any action which the parent union proposes to take to remedy the violations.

In order that this investigation may be concluded as expeditiously as possible, it would be appreciated if you would communicate with me before November 17, 1965.

Sincerely yours,

/s/ J. D. C.
JOSEPH D. CADOLA
Area Director

cc: LU 6, Hotel & Restaurant
Workers, AFL-CIO
305 West 44 Street
New York, N. Y.

EXHIBIT 56 ID.

U. S. Dist. Court, S. D. of N. Y., Jan. 17, 1967

Sidney E. Cohn, Esq.
Cohn and Glickstein
717 Fifth Avenue
New York, N. Y. 10022

Dear Mr. Cohn:

You will no doubt recall that at the conference held December 27, 1965 in my office with representatives of the Department of Labor, we pointed out to you and Messrs. Laurie, Marley and Eaby the immediate necessity for undertaking extensive revisions in the constitution and by-laws of Hotel, Motel and Club Employees Union, Local 6 in order to bring it into conformance with the requirements of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA). These revisions should include but not be limited to the following:

1. Clarification of the positions within the organizational structure which meet the requirements of "officers" as defined in 3(n) of the Act.

2. Insuring that all such officer positions are hereafter filled by elections among the members in good standing as provided in Section 401.

3. Establishing a more reasonable requirement for office holding than the present requirement of prior service in the Assembly, the Executive Board or the defunct shop delegates council which requirement eliminated about 95% of Local 6's membership from contention in the 1965 election.

4. The organizational structure should be clearly defined with the responsibility for carrying on union business fined in some one central governing body. The present arrangement is complex and confusing with many boards and committees (interlocking to a great degree) carrying on the affairs of the local. The present governing body appears to be

the Administrative Board made up of the general officers and delegates to the trade council while the Executive Board, contrary to the implications of its name, performs few if any executive functions.

As I explained we have had no previous experience with a labor organization as complicated in structure as Local 6 and therefore will welcome any proposals you deem appropriate to effect compliance with the Act. Please let me have your comments well in advance of February 26, 1966, which is the deadline for filing under the current waiver agreement.

Sincerely yours,

FRANK M. KLEILER
Director

cc: Jonas B. Kats, Esq.
Brown & Gettler
6 E. 4th Street
Cincinnati, Ohio

EXHIBIT 64 ID.

U. S. Dist. Court, S. D. of N. Y., Jan. 17, 1967

Change in Districting Hotels from 1962 Election to 1965 Election of Local 6

Total hotels and clubs counted:	271
Hotels and clubs with different ED's in 1965 than in 1962:	145
Hotels with different geographical districts in 1965 than in 1962:	42
Total with any kind of change:	187
(69.0% of all hotels and clubs)	

Did not count hotels which were not listed in 1965. Did count hotels which were first listed in 1965.

Sources: Election Guide for 1962 election, published in Hotel and Club Voice for May 1962; and election guide for 1965 election, published in Hotel and Club Voice for April 1965 (Exhibits 50 and 51).

[fol. 1237]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

66 Civ. 626

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor, PLAINTIFF

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION,
LOCAL 6, DEFENDANT

APPEARANCES:

ROBERT M. MORGENTHAU, ESQ.,
United States Attorney for the
Southern District of New York,
Attorney for Plaintiff.
ROBERT E. KUSHNER, ESQ.,
RONALD P HUNTLEY, ESQ.,
Assistant United States Attorneys,
Of Counsel.

COHN AND GLICKSTEIN, ESQS.,
Attorneys for Defendant,
717 Fifth Avenue,
New York, New York 10022.
SIDNEY E. COHN, ESQ.,
JEROME B. LURIE, ESQ.,
LEONARD LEIBOWITZ, ESQ.,
Of Counsel.

* * * *

[fol. 1238]

WYATT, District Judge,

The principal question here is whether prior service as a Union officer, on a Union Board, or in the Union Assembly, is a "reasonable" qualification, under the Landrum-Griffin Act, for candidacy for office in the defendant Union.

Section 401(e) of the Act (29 U.S.C. § 481(e)), which may also be cited as the Labor-Management Reporting and Disclosure Act of 1959, provides that in any union election required by the Act "every member in good standing shall be eligible to be a candidate and to hold office (subject to . . . reasonable qualifications uniformly imposed)".

This action, tried to the Court without a jury, was brought by the Secretary of Labor to declare void, etc. an election of officers of defendant Union ("the Union" or "Local 6") held on May 19, 1965. The action is authorized by Section 402 of the Act (29 U.S.C. § 482).

The Secretary charges that the Union violated Section 401(e) of the Act in that its by-laws made eligible for nomination as officers only those members who were then members of the Assembly or of the Executive Board or who had served in the past as members of the Assembly [fol. 1239] or of the Executive Board or of the former Shop Delegates Council. The Secretary contends that this qualification is not "reasonable" under Section 401(e) of the Act.

It is undisputed that the Union is a "labor organization" subject to Section 401 of the Act, in that it is engaged in an industry affecting commerce (Act § 3(i), 29 U.S.C. § 402(i)). It is also undisputed that members of the Union, having invoked available internal union remedies without final decision, etc., properly filed a complaint with the Secretary and that the Secretary investigated, found probable cause to believe that a violation had occurred, etc., and timely brought this action.

The Court has jurisdiction under Section 402 of the Act.

If the Union did violate the Act as charged and if this violation "may have affected the outcome" of the election, the Court must then declare the election void and direct a new election (29 U.S.C. § 482(c)).

The prior office holding qualification of the by-laws is found not to have been "reasonable" and its enforcement in the 1965 election is found to have been a violation of the Act.

It is not found that this violation "may have affected the outcome" of the election.

[fol. 1240]

The 1965 election of officers cannot be declared void, therefore, but the Secretary may properly be given relief in respect of future such elections.

I

A. Description of the Union; Elections Before That in 1965

The Union began about 1938 with a successful effort to organize workers in the hotels and clubs in New York City; it was in an organizational period until about 1946.

The Union has been at all times affiliated with the Hotel and Restaurant Employees and Bartenders International Union, A.F.L.-C.I.O. (the "Hotel, etc. International"). It is the largest of the locals affiliated with the Hotel, etc. International.

From the early days of the Union to 1951, its "highest legislative body" was the "Shop Delegates Council". This was made up (a) of delegates elected from each department of each hotel and club, (b) of members of "department boards" and (c) of the general officers. In order to be eligible as a candidate for delegate to the Shop Delegates Council, a person must have been employed at the hotel or club for at least six months and must have been a member of the Union for at least one year.

[fol. 1241]

After a crisis in the affairs of the Union, an election of delegates to a convention was held in May 1951 and an

election of officers was held in June 1951. There were rival slates in both elections. Voting machines were used, as has been the practice in all later elections of the Union. The candidates for delegates of the United Union Organization, running on Row A (the top row) were elected by a wide margin. The candidates for officers of the Administration Ticket, running on Row A, were elected by a vote of about 7,300 to about 3,300 for the nearest opposition slate.

It has been the practice in all Local 6 elections that the administration slate is given the Row A position on the voting machines.

New by-laws were adopted at a special convention held in September 1951, and from that time down through the 1965 election in suit, the structure of the Union has been substantially the same.

By force of the 1951 by-laws, the Shop Delegates Council was abolished and the "Assembly" was set up as the "highest legislative body" in its place. The method of electing delegates to the Assembly was changed from that employed for the Shop Delegates Council. Doubtless these changes were to reduce the governing body to a less nu- [fol. 1242] merous and thus to a more efficient group.

The Union is organized by departments and by districts.

The departments are made up of members in each separate craft or broad category of work, except that all club employees are in the club department regardless of the work they do. There are five departments of hotel employees: Banquet, Bar, Dining Room, Housekeeping and Kitchen.

The districts for hotel employees are geographical areas determined by the most effective and convenient grouping of hotels for administrative purposes. There are six numbered districts for hotel employees. All club employees are in a single district.

The basic element in the Union is the unit or shop in the hotel or club where the members of a particular craft work. Each dining room or kitchen, for example, is a separate unit. Each unit elects a "department delegate" who cooperates with officers of the Union in the handling of grievances and other matters affecting members in his

unit. The term "department delegate" is simply another name for shop steward. The department delegates in a district, together with the district officers, make up the District Council.

[fol. 1243]

The organizational novelty of Local 6 is that, while each craft has its own unique traditions, interests and problems, Local 6 includes several different crafts and negotiates with employers for them all. By means of by-laws and otherwise, however, care is taken that each craft (department) in Local 6 has proportional representation in the Assembly and in other Union activities. Care is similarly taken that the employees in any one hotel do not acquire a dominant influence.

Each district has a vice-president and from one to four business agents. These are paid and full time officers and are elected by the members in the district (before March 1959 voting had been by departments).

There are four general officers of the Union: President, Secretary-Treasurer, General Organizer, and Recording Secretary. The general officers are paid, full time officers and are elected by all members in all districts.

The delegates to the Assembly are elected by districts but within a district delegates may be elected from "election districts" established by the Assembly (before March 1959 voting had been by departments). In general, one delegate is elected for each 75 members in the district; there are by-law provisions to see that delegates are elected from the various departments in proportion to depart-

[fol. 1244] ment membership and not too many from any one hotel. The Assembly meets at least quarterly and each year must meet for a full day. The general officers, the vice-presidents, and the business agents are automatically members of the Assembly.

There is an Executive Board (which meets monthly) made up of the principal officers and of members elected by the Assembly on the basis of one Executive Board member from each department for each 500 members of that department.

The term of office of officers and members of the Assembly was two years until a revision of the by-laws in March 1959; since March 1959, the term has been three years.

From September 1951 until at least October 15, 1963, the by-laws of the Union required that a candidate for office must have been a member in good standing for two years and in addition "must be a member of either the Assembly or the Executive Board, or else, at some time in the past, have served at least one term on either the Executive Board, the Assembly, or the old Shop Delegates Council".

It is suggested for the Union that at a meeting of the Assembly on October 15, 1963, the quoted by-law provi- [fol. 1245] sion was amended so as to change the word "term" to the word "year". The evidence is not convincing that such amendment was in fact adopted. The difference between "term" and "year" is not significant for this decision, however, and it will be assumed that before the 1965 election the word "term" had been changed to "year".

While this prior office qualification had to be satisfied by candidates for Union office at an *election*, it was not applicable to *appointed* officers. If an office becomes vacant, a successor can be appointed by the general officers subject to approval by the Executive Board and the Assembly. Moreover, the Assembly may appoint business agents (who are paid officers) additional to those elected. Several members who had never held office in the Union were in fact appointed as business agents.

Candidates for delegate to the Assembly must have been members in good standing in the Union for one year before nomination.

The 1951 by-laws provided that an election of officers should take place in May 1954 and every two years thereafter.

An election of officers, members of the Executive Board and members of Department Committees took place on May 19, 1954. The incumbent administration ran a full [fol. 1246] slate for 4 general offices, 23 department offices, 59 members of the Executive Board, and 70 mem-

bers of the Department Committees. There were no opposition nominees for general offices and but 10 opposition nominees for 9 of the 23 department offices. There were 19 opposition nominees for 16 of the 59 places as members of the Executive Board. There were 11 opposition nominees for 11 of the 70 places as members of Department Committees. The administration slate won all contests by substantial margins except in one department where the margin was smaller. The vote in the several contests for department offices was as follows:

Administration Nominees		*Opposition Nominees*
(elected)	1981	136
	* * *	
(elected)	2315	712
	* * *	
(elected)	2276	674
(elected)	2270	691
(elected)	2238	693
(elected)	2216	672
		189
	* * *	
(elected)	4541	53
(elected)	4565	
(elected)	4523	
(elected)	4534	
	* * *	

[fol. 1247]

(elected)	666	567
	* * *	
(elected)	684	522

There was an election of officers, members of the Executive Board, and members of Department Committees, called to be held on May 16, 1956. The administration nominated a full slate for 4 general offices, 23 department offices, 59 members of the Executive Board, and 60 members of the Department Committees. There were no opposition nominees for any offices. In one department, there were 4 opposition nominees for 3 places as members of the Executive Board and 7 opposition nominees for 7

of the 10 places as members of the Department Committee. There was no voting in 1956 except in the one department where there were some opposition nominees for the Executive Board and the Department Committee. In that department, the full administration slate for the department appeared on the voting machine even though there was no contest for any of the offices. The administration slate won by a substantial margin. The administration nominees in all departments were declared elected.

[fol. 1248]

For some reason not appearing in the record, there was no election of officers in 1958, the end of the two year term. Presumably the incumbent officers continued to act.

At some time before March 1959, the by-laws were amended to provide that there should be an election of officers and members of the Assembly in May 1959 and every third year thereafter, and that the terms of office of the officers and members of Assembly should be three years. It was also provided that voting should be by districts rather than by departments. There were four geographical districts, a club district and two departments treated as districts.

There was an election on May 21, 1959 of officers and of delegates to the Assembly, all for a three year term. The administration nominated a full slate for 4 general offices, 21 district offices, and 408 delegates to the Assembly. There were no opposition nominees for general offices and but 4 opposition nominees for 3 of the 21 district offices. There were 15 opposition nominees for 15 of the 408 places as delegates to the Assembly. The administration won all contests by substantial margins. The vote in the several contests for district offices was as follows:

[fol. 1249]

	Administration Nominees	*Opposition Nominees*
(elected)	1865	116
(elected)	1862	
	* * *	
(elected)	778	205
	* * *	
(elected)	757	209
		47

There was an election on May 23, 1962 of officers and of delegates to the Assembly, all for a three year term. The administration nominated a full slate for 4 general offices, 25 district offices, and 399 delegates to the Assembly. There were no opposition nominees for any of the offices. There were 6 opposition nominees for 6 of the 399 places as delegates to the Assembly. The entire administration slate was elected; the opposition nominees for the Assembly were defeated by wide margins.

The by-laws were further amended on October 15, 1963. As a result, the Union was divided into geographical districts and the Club District; each district was to have its own offices: a vice-president and one or more business agents; no officers were to be elected by any department. It was provided that the next election should be in May 1965.

The membership in the Union since 1951 has remained [fol. 1250] at about the same number. The exact figures, with number of votes cast in the elections (including the 1965 election in suit), are as follows:

Election Year	*Membership*	*Votes Cast*
1951	26,630	12,705
1953	25,678	14,618
1959	26,974	11,214
1962	26,340	7,131
1965	27,354	11,254

While the total number of members in the Union is thus a static figure, there seems to be a high turnover of

individual members. This is shown by the fact that from August 1, 1963 to July 31, 1965 there were 5,737 new members joining the Union, or an average of about 240 new members each month. Applying this figure to the 36 months between the May 1962 election and the May 1965 election, it would appear that 8,640 new members joined the Union in that period, or roughly a third of the membership. It is indicated that there is a turnover of upwards of 10% of the Union membership each year.

The exact number of Union members who were eligible to run for Union office in May 1965 cannot be determined, principally because there are few records of the old Shop [fol. 1251] Delegates Council which, as already noted, was abolished in 1951. It was impossible for the Union to apply its eligibility rule with accuracy because there was no way to verify whether a particular candidate had been a member of the Shop Delegates Council. There is some evidence that if an identification card or some similar certificate in respect of the Shop Delegates Council was produced by a candidate, this was accepted to establish eligibility. The Union produced at trial a list of names taken from its records which showed that at least 1725 members were eligible to run for office in the May 1965 election. Of these 1725 members, 1182 were eligible because they had been members of the Shop Delegates Council before 1951; the remaining 543 were eligible because they had been members of the Assembly at some time since 1951.

In practice it was not possible to be elected to the Assembly except with the blessing of the Administration Party conferred by selection to run for the Assembly on Row A. This was doubtless in large part because there was never a full slate of opposing candidates for the Assembly. The candidates to run on Row A for the Assembly were selected by the incumbent group of officers and were put in nomination after caucuses of invited mem- [fol. 1252] bers, attended by officers. It was only natural that candidates selected to run on Row A for the Assembly would be supporters of the administration. All candidates on Row A were pledged to support each other. Dissidents could not be elected to the Assembly.

B. The Election of May 19, 1965

An election was called to be held on May 19, 1965. At this election, there were to be elected from the Union as a whole four general officers and 10 delegates to the Convention of the International. In the 7 districts, there were to be elected a total of 27 district officers (7 vice-presidents and 20 business agents) and 372 delegates to the Assembly.

In anticipation of the 1965 election, an opposition group was organized calling itself the "Membership Party".

The Assembly met on April 6 for nominations for the 4 general offices and for 10 delegates to the International Convention. Nominations were permitted to be made by any member. Two full rival slates were nominated for these 14 positions, one being the administration slate (made up principally of those who were already serving as paid officers) and the other that of the opposition Membership Party.

[fol. 1253]

There were meetings on April 13 in each district for nominations for the 27 district offices and for the 372 delegates to the Assembly. A full slate was nominated for the administration to run for the 27 district offices and for the 372 places for delegates to the Assembly. In all districts except the Club District, there were opposition candidates nominated for vice-president; in five districts, there were opposition candidates nominated for business agent, but not for all the business agent positions to be elected. For the 27 district offices to be elected, there were 14 opposition nominees for 16 offices (two of the Membership Party nominees were each nominated for two separate offices). Of the 14 opposition nominees for district office, one was an independent not affiliated with the Membership Party. For the 372 Assembly delegates to be elected, there were 5 opposition nominees, 2 of the Membership Party and 3 running as independents.

Elections in the Union are conducted under rules and regulations established by an "Election and Objections

Committee" designated by the Assembly. The Committee also rules on the eligibility of candidates nominated to run for office or for delegate to the Assembly.

The Committee ruled ineligible two of the Membership Party nominees for the four general offices. The nominee [fol. 1254] for Secretary-Treasurer was ruled ineligible because he had not held prior office. The nominee for Recording Secretary was ruled ineligible because he had not been a member of the Union for the required period of two years.

The Committee ruled ineligible two of the Membership Party nominees for delegate to the International Convention, apparently because they had not been members of the Hotel, etc. International in continuous good standing during the period since April 18, 1964. Delegates to such Convention must have been members of the Hotel, etc. International for at least two years and of the local union at least sixty days before the Convention. The Convention for which delegates were to be elected by Local 6 on May 19, 1965 was to meet on April 18, 1966.

The Committee ruled ineligible, because they had not held prior office, five Membership Party nominees for vice-president of districts (one was a nominee for vice-president in two districts) and three Membership Party nominees for business agents of districts (one was also a nominee for vice-president). Eight persons were thus ruled ineligible for district office because they had not held prior office.

[fol. 1255]

The Committee ruled ineligible, because they lacked the required period of membership, three Membership Party nominees, one for vice-president and two for business agent.

No nominees for the Assembly, whether of the Membership Party or independent, were ruled ineligible.

There is no suggestion that the Committee incorrectly applied the qualification provisions of the by-laws to the facts as they existed in respect of the opposition nominees.

The 1965 election, in accord with settled practice, was conducted with voting machines. The nominees for the

four general offices and for the ten delegates to the International Convention appeared on the machines in all the districts. The full administration slate was on Row A. The two nominees of the Membership Party for general office (President and General Organizer) and its eight nominees for the ten delegates to the International Convention were on Row B, just below Row A.

There were thus two blank spaces on Row B in the four columns for general offices (no Membership Party nominees for Secretary-Treasurer and Recording Secretary) and two blank spaces in the ten columns for dele- [fol. 1256] gates to the International Convention. Had the prior office by-law qualification not been in force, there would have been a Membership Party nominee for Secretary-Treasurer on Row B in all districts.

In each district, the nominees for district offices and for the Assembly appeared on the machines in an extension to the right of the rows in which were the nominees for general offices; then in a further extension of the row to the right appeared the nominees for delegates to the International Convention. The full administration slate for the district was on Row A.

According to normal voting machine procedure, it was possible to pull down one lever to vote for all the nominees of a particular slate on one row.

In four districts (1, 3, 5, 6), there were no opposition nominees on the voting machines for the 14 district offices or for the 195 Assembly delegates to be elected in those districts. Had the prior office by-law qualification not been in force, there would have been 6 Membership Party nominees on the voting machines for the 14 district offices to be elected in those districts.

In the Club District, there was one Membership Party nominee on the voting machines for Assembly delegate, [fol. 1257] there having been 24 delegates to be elected in the election district of that nominee. This Membership Party nominee appeared on Row B. Had the prior office by-law qualification not been in force, the situation in that district would have been the same.

In one district (2), there was one Membership Party nominee for one of the three business agents to be elected.

This nominee appeared on Row B. There was also an independent opposition nominee for one of the three business agents to be elected and two independent nominees for two of the 29 Assembly delegates to be elected in their election district. The independent nominees appeared on a third row designated "Independent" and just below Row B. Had the prior office by-law qualification not been in force, there would have been two Membership Party nominees for two of the four district offices to be elected.

In the remaining district (4), there was one Membership Party nominee for one of the three business agents to be elected and one Membership Party nominee for one of 28 Assembly delegates to be elected. These nominees appeared on Row B. There was one independent opposition nominee for one of the 28 Assembly delegates. The independent nominee appeared on a third row designated [fol. 1258] "Independent" and just below Row B. Had the prior office by-law qualification not been in force, there would have been two Membership Party nominees for 2 of the 4 district offices to be elected (two Membership Party nominees were each nominated for two different offices; it is assumed that they could not have properly run for both, even if eligible for either).

In the May 19, 1965 election, 11,254 members cast votes (not all voted for every position to be filled) out of 27,354 members eligible to vote.

So far as appears from this record, the voting was fairly and honestly conducted and the votes were accurately counted.

The result of the voting was the election of all Row A administration slate candidates.

The vote in the two contests for general offices was as follows:

	Administration Nominees	*Membership Party Nominees*
(elected)	9,314	1,347
(elected)	9,216	1,299

The lowest vote cast for an administration nominee for delegate to the International Convention was 8,615; the

highest vote cast for a Membership Party nominee was 1,154.

[fol. 1259]

Two nominees for Union office of the Membership Party who were ruled ineligible because they had not held prior office were ruled eligible to run for delegate to the International Convention and did appear as candidates for delegate on the voting machines in all districts. They received 1,151 and 1,145 votes, respectively; as noted above, the lowest vote for an administration nominee was 8,615.

The vote in the contests for business agents, where three were to be elected in each of two districts, was as follows:

Administration Nominees		*Membership Party Nominees*	*Independent Nominees*
(elected)	1,188	333	70
(elected)	1,206		
(elected)	1,184		
		* * *	
(elected)	1,924	262	
(elected)	1,942		
(elected)	1,903		

In the contest for one place as Assembly delegate in the Club District, the lowest vote cast for an administration nominee for Assembly delegate was 571; the vote for the Membership Party nominee was 58.

In District 2, the lowest vote for the 29 administration nominees for Assembly delegate was 568; the two inde-
[fol. 1260] pendent nominees received 40 and 41 votes, respectively.

In District 4, the lowest vote for the 28 administration nominees for Assembly delegate was 540; the Membership Party nominee received 71 votes and the independent nominee 14.

C. Epilogue

The officers and members of the Assembly elected on May 19, 1965 have been acting as such since that date and have already served almost two years of their three year term.

It appears that during the pendency of this action and in December 1966, the by-laws of the Union were substantially changed in respect of the prior office qualification. As then amended, the qualification to run for Union office is that the candidate "must have served as a member of either the Assembly or the Executive Board or he must have been a department delegate, or in the alternative, he must have been a member of the Union for five (5) years".

II

Evidence was introduced for the Secretary to show to what extent other unions in the country required prior [fol. 1261] office holding to be eligible for union office. This kind of evidence has been admitted and considered in determining whether particular qualifications were "reasonable" under Section 401(e) of the Act. *Wirtz* v. *Local Unions No. 406, etc.*, 254 F.Supp 962, 965 (E.D.La. 1966); *Wirtz* v. *Local 30, etc.*, 242 F.Supp. 631 (S.D.N.Y. 1965); remanded on other grounds, 366 F.2d 438 (2d Cir. 1966); *Goldberg* v. *Amarillo General Drivers, etc.*, 214 F.Supp. 74, 77-8 (N.D.Tex. 1963).

There were 72 major national and international unions, that is, unions having more than 40,000 members. Of these, only one required prior office holding as a qualification for candidacy for local union office. The Hotel, etc. International, with which Local 6 is affiliated, is not that one and has no such requirement.

There were 23 national and international unions which have between 20,000 and 40,000 members. None of these required prior office holding as a qualification for candidacy for national or international union office. The Secretary argues that this is appropriate for consideration because the membership of Local 6 is about mid-way between 20,000 and 40,000; for Local 6, it is pointed out

that Local 6 is not a national union and that the national union with which it is affiliated has a membership of 444,000.

[fol. 1262]

There were 485 local unions affiliated with the Hotel, etc. International. The average number of members of the locals was 899. There were 125 locals having more than 900 members, including, of course, Local 6. Of these 125 locals, 93 (or about 75%) had no requirement of prior office holding as a qualification for candidacy for local union office.

There were 66 local unions of all kinds which had total receipts in 1964 of more than one million dollars; Local 6 in that year had receipts of more than two million dollars. Of these 66 local unions, only seven required prior office holding as a qualification for candidacy for local union office. Local 6 was one of the seven, and the other six were all affiliated with the one national or international union which requires prior office holding as a qualification for candidacy for local union office.

III

The prior office eligibility requirement of Local 6 was not "reasonable" within the meaning of Section 401(e) but was contrary to the basic purposes of the Act. It has been noted that the requirement dates from at least 1951; the Act did not become effective until 1959.

[fol. 1263]

One of the chief aims of the Act was to secure "free and democratic union elections" just as in elections in the community at large. S. Rep. No. 187, 86th Cong., 1st Sess., 20, also 5-6 (1959). Congress therefore provided specifically and affirmatively that "every member in good standing shall be eligible to be a candidate" and the only relevant exception was for "reasonable qualifications". The burden of showing that a qualification is "reasonable" is a very heavy one.

Any requirement of prior office holding to be eligible for union office would be unreasonable. The only justifi-

cation for such a requirement is, as here urged for Local 6, that the magnitude and complexity of union problems requires a certain minimum of experience in union affairs. But this is on the premise that the membership at large cannot be trusted properly to evaluate union experience in casting election ballots. The philosophy of a free democratic society, expressed in the Act, does not tolerate such a premise. The philosophy adopted by Congress in the Act is well expressed in a motto used by a newspaper and said to have been inspired by, or translated from, Dante (Divine Comedy, Purgatory, canto XXII, lines 67-69): "Give light and the people will find [fol. 1264] their own way". The members of a union must have a free choice to give such weight to experience, inexperience, or to other factors as they see fit. Such is the choice when voting for President and Vice-President of the United States. Candidates for those high offices are not required to have any particular prior experience. The voters weigh the prior experience of the candidates, or lack thereof, in making their choice.

The evidence shows that over 90% of large local unions of all kinds have no prior office requirement and that about 75% of the larger locals which are affiliated, like Local 6, with the Hotel, etc. International have no such requirement.

In any event, the particular by-law requirement of Local 6 was not in its context "reasonable".

Accepting the Union figures, the effect in 1965 of the prior office qualification was to make ineligible for office about 93% of the membership. While 1725 members (or about 7% of the total) were eligible, 1182 of this number (or nearly 70% of the eligibles) satisfied the prior office requirement by service on the Shop Delegates Council, a body which was abolished in 1951, fourteen years before the election. A former member of the Shop Delegates Council who had not held office for fourteen years would thus be eligible whereas an active department delegate [fol. 1265] for ten years would not be eligible.

Since 1951 the only way new members could become eligible for office was to win election to the Assembly. But in this period the only candidates which won such election

were those who ran on Row A, the administration ticket. The only way to run on Row A was to be selected by the administration. Thus, dissidents could not become eligible to be opposing candidates for office and effective opposition was thus sharply curtailed.

Finally, the need for prior office experience is not shown. In this connection, it is significant that an officer may be *appointed* who has no prior office experience and who thus does not satisfy the eligibility requirement for election to that office. But once such an officer is appointed, he automatically becomes a member of the Assembly and immediately becomes eligible to run thereafter for any union office. This enables the incumbent group to qualify members for elective office by a procedure not available to dissidents.

Any requirement of prior office holding to run for union office is bound to favor the incumbents to the prejudice of wholly free and open elections which it was the purpose of Congress to encourage.

[fol. 1266]

IV

It cannot be found that the violation of Section 401(e) "may have affected the outcome" of the 1965 election.

Decision of this issue is governed by the teaching of *Wirtz* v. *Local Unions 410, etc.*, 366 F.2d 438, 442-43 (2d Cir. 1966). It may be possible to read that opinion (at 443) as declaring that whenever there has been an "exclusion of willing candidates from the ballots", this is sufficient without more to compel a finding that the exclusion "may have affected the outcome". In an earlier decision by a District Court, such seems to have been assumed: *Wirtz* v. *Local Unions No. 406, etc.*, 254 F. Supp. 962, 966-67 (E.D.La. 1966). Our Court of Appeals stated in its opinion, however, that the Secretary must show a "reasonable probability" that the election may have been affected and that there is a "meaningful relation" between the violation and the election outcome. It seems, therefore, that a violation by disqualification of candidates does not automatically require a finding that the outcome may have been affected.

Two elections were before our Court of Appeals, each in a different local union. Prior to one election, eleven opposition candidates were disqualified; after this, the election was uncontested, 216 members then voting out of a total of almost 600 members. One of the disqualified [fol. 1267] candidates is referred to by the Court of Appeals as a "proven vote-getter" who had won in an earlier election. In the other election, two opposition candidates were disqualified; after this, the election was uncontested, 607 members then voting out of a total of 3,000 members.

By contrast, while the violation in the case at bar caused the disqualification of nine candidates, there was nevertheless a contested election. In this contested election, there was an opposing candidate for the highest union office (President) and an opposing candidate for General Organizer, the second or third most important office in the union. There were eight opposing candidates for Convention Delegate, running in all districts, and three opposing candidates for district offices. Two of the candidates disqualified for general offices (only one of whom was disqualified for lack of prior office experience) were ruled eligible to run, and did run, in all districts for Convention Delegate. The opposing candidates established a campaign headquarters and conducted an apparently vigorous campaign with distribution of leaflets and weekly caucuses and election forums. There is nothing to show that any disqualified candidate was a "proven vote-getter" because none of those disqualified had ever run for any office or for the Assembly. In the contested elec- [fol. 1268] tion of 1965, there were 11,254 votes cast out of a total membership of 27,354; this is to be compared with the vote in the last uncontested election of 1962 when 7,131 votes were cast out of a total membership of 26,340.

Consideration has been given not merely to the effect of the by-law on those disqualified but to its possible effect in discouraging others from coming forward as opposing candidates. Nonetheless the heavy vote in favor of the administration candidates is convincing that the existence and enforcement of the by-law could not have affected the outcome of the election.

The evidence satisfies me that the primary reason for the heavy vote in favor of the administration was the lack of any real grievance or issue against the union management. The platform of the opposition Membership Party did not charge any abuses or misconduct or even any inefficiency; there was no attempt to state any specific complaints; there was no dramatic or important issue to rouse the membership against the incumbents. The appeal of the opposition was in substance that it could do the same job better.

The evidence also shows an important further reason for the election outcome. The administration ran candidates for all 372 places as delegates to the Assembly; [fol. 1269] against them were only 5 opposing candidates and of these only 2 were of the Membership Party. The history of earlier elections shows that when there are only a few candidates opposing a full slate for the Assembly, the opposing candidates are never elected. There is no suggestion that the qualification for Assembly candidacy (one year's membership) was unreasonable. Any substantial rank and file dissatisfaction would have produced many more opposing candidates for the Assembly than the 5 who actually ran. The presence in all districts of a full slate of Assembly delegates, virtually unopposed, was itself so great an advantage to the administration as to insure the outcome. The vote of 372 Row A candidates themselves, with their fellow workers and friends in their respective shops, was a powerful factor and, taken with the ability of members to vote the only full ticket by pulling down one lever of the voting machine, must have been overwhelming.

V

The 1965 election cannot be declared void and a new election directed. However, Local 6 ought not to be left free to enforce in future elections—such as that due to be held in May 1968—a qualification which is not "reasonable". The Secretary ought not be put to the necessity [fol. 1270] of bringing a second action.

Rather than dismissing the complaint, therefore, it seems only right to enjoin Local 6 from enforcing in future elections any prior office holding qualification.

True, the Act does not expressly authorize such relief; neither does it expressly deny authority to grant it. The legislative history indicates that Congress never considered the situation here presented; thus there is no legislative history relevant to the question of granting the suggested relief.

In the *Local Unions 410, etc.* opinion, our Court of Appeals said (366 F.2d at 442):

> "And because Title IV does not permit the Secretary to seek either to enjoin future elections, or to declare a given candidacy requirement unlawful absent a valid complaint and an investigation of its application to a specific election, cf. *Calhoon* v. *Harvey*, *supra*, we conclude that we have no power to afford the Secretary relief and therefore that these cases are moot."

But the situation there was that a new election had *already* taken place when the Court of Appeals spoke; action had already become moot. In the case at bar, the officers still hold office under the 1965 election against which the action was directed. The action here is not moot. Moreover, unlike *Calhoon* v. *Harvey*, 379 U.S. 134 (1964), the Secretary (not individual members) is properly before this Court.

[fol. 1271]

If the 1965 election cannot be declared void under the Act, despite a violation, why should not the Secretary at least be given relief against a similar violation in the future? This would seem entirely consistent with the purposes and objects of the Act. The Secretary in his complaint prays in traditional form for "such other relief as may be appropriate".

Congress by the Act has given jurisdiction to this Court as a court of equity. Such jurisdiction means that the Court can grant whatever relief is appropriate to the purposes and objects of the Act, whether expressly au-

thorized in the Act or not. *United States* v. *Republic Steel Corp.*, 362 U.S. 482, 492 (1960); *Mitchell* v. *DeMario Jewelry, Inc.*, 361 U.S. 288, 290-92 (1960); *Porter* v. *Warner Co.*, 328 U.S. 395, 397-98 (1946). Citing these decisions, a commentator has suggested with reference to the Act:

> "The fact that one type of equitable enforcement remedy may have been expressly provided by Congress in a regulatory statute should not be a bar to a court's utilization of additional equitable remedies which will achieve the legislative purpose." Beaird, Union Officer Election Provisions of the Labor-Management Reporting and Disclosure Act of 1959, 51 Va.L.Rev. 1306, 1338 (1965).

Our Court of Appeals, citing with approval the Beaird article at the pages from which the above quotation is [fol. 1272] taken, appears to have concluded that appropriate equitable relief may be given in this type of action even if not expressly authorized in the Act. *Wirtz* v. *Local Unions 545, etc.*, 366 F.2d 435, 436 (2d Cir. 1966).

The change made by Local 6 in its by-laws after the action was commenced is not sufficient to comply with the Act. The qualification by-law in effect at the May 1965 election required prior office holding and two years' membership in good standing. That by-law as later amended now requires prior office holding *or* membership in good standing for *five* years. Thus the amended prior office holding qualification has the effect of discriminating against those who have been members for two years but have not held prior office. In a union with a large turnover and the regular entry of numerous new members, the amended qualification by-law is not "reasonable" under the Act. The Secretary is entitled to an injunction against the enforcement in any future election in Local 6 of any by-law requiring prior office holding as a qualification for office.

[fol. 1273]

The foregoing contains the findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a).

A judgment in accordance with the opinion may be submitted on notice.

Dated: New York, New York
March 20, 1967

INZER B. WYATT
INZER B. WYATT
United States District Judge

[fol. 1275]

JUDGMENT AND PERMANENT INJUNCTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

66 Civ. 626

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor, PLAINTIFF

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION,
LOCAL 6, DEFENDANT

This action having come for trial on January 16, 17, 18 and 19, 1967, before the Court, Honorable Inzer B. Wyatt, District Judge, presiding, and the issues having been duly tried, and a decision containing findings of fact and conclusions of law having been duly rendered and filed on March 20, 1967, it is

ORDERED, ADJUDGED AND DECREED as follows:

(1) The prior office holding qualification contained in Article IV, Section 7(a)(2) of defendant's By-Laws is not a "reasonable qualification" upon its members' right

to nominate candidates for elective office within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, Section 401(e), 29 U.S.C. 481(e), and its enforcement in the election of May 19, 1965 was a violation of the Act.

(2) The aforesaid violation of the Act was not one which "may have affected the outcome" of the 1965 election within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, Section 402(c), 29 U. S. C. 482(c).

[fol. 1276]

(3) The defendant, its officers, agents, servants, employees, and representatives, and all those persons in active concert or participation with them, be, and they hereby are, permanently enjoined and restrained from enforcing in any future election of defendant, any by-law requiring prior office holding as a qualification for office.

(4) The jurisdiction of this Court is retained for the purpose of enforcing or modifying this permanent injunction and for the purpose of granting such additional relief as may hereafter seem appropriate.

Dated: New York, New York
March 29, 1967.

INZER B. WYATT
INZER B. WYATT
United States District Judge

Judgment Entered 3-29-67.

JOHN J. OLEAR, JR.
Clerk.

[fol. 1277]

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

66 Civ. 626

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor, PLAINTIFF

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION,
LOCAL 6, DEFENDANT

Notice is hereby given that plaintiff W. Willard Wirtz, Secretary of Labor, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment and permanent injunction entered in this action on March 29, 1967.

Dated: New York, New York
April 21, 1967.

ROBERT M. MORGENTHAU (REK)
ROBERT M. MORGENTHAU
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Southern District of New York
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To:

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New York, New York 10022

* * * *

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 513—September Term, 1966

Argued June 13, 1967—Decided July 28, 1967

Docket No. 31272

W. WILLARD WIRTZ, Secretary of Labor, United States Department of Labor, PLAINTIFF-APPELLANT

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6 DEFENDANT-APPELLEE

Before HAYS and FEINBERG, Circuit Judges; DIMOCK, District Judge *

Appeals by both plaintiff and defendant from a judgment of the United States District Court for the Southern District of New York (a) which was entered upon a decision of Inzer B. Wyatt, *Judge*, (1) holding that certain union practices in connection with an election for union office could not be used as grounds for voiding the election under § 402(c) of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 482(c), because the action of the plaintiff Secretary of Labor was not based upon the complaint of a union member as required by § 402(a), 29 U.S.C. § 482(a), and (2) holding that, though a certain by-law of the defendant union limiting candidacy for union office violated § 401(e) of the Act, 29 U.S.C. § 481(e), an election in which the by-law was applied could not be declared void under the provisions of § 402(c) because plaintiff failed to show

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* Of the Southern District of New York, sitting by designation.

that the violation of Section 401(e) "may have affected the outcome" of the election, and (b) which enjoined (3) the application of the questioned by-law to future elections.

Affirmed as to (1); reversed as to (2) and (3).

ROBERT E. KUSHNER, Assistant United States Attorney (Robert M. Morganthau, United States Attorney for the Southern District of New York, and Martin P. Solomon, Assistant United States Attorney, on the brief), *for Appellant*,

JEROME B. LURIE, New York, New York (Cohn & Glickstein and Leonard Leibowitz, on the brief), *for Appellee*.

HAYS, *Circuit Judge:* Both plaintiff Secretary of Labor and defendant union appeal from a judgment of the United States District Court for the Southern District of New York in a case involving an election of officials of the defendant union. The district court held that a certain by-law of the union limiting candidacy for union office was violative of Section 401(e) of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 481(e),[1] but declined to set aside, under the provisions

[1] "(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published separately. The election officials designated in the constitution and bylaws or

of Section 402(c) of the Act, the election in which the by-law was applied because the Secretary failed to show that application of the questioned by-law "may have affected the outcome" of the election. However the district court enjoined the application of the by-law to future elections. During the course of the hearing on the Secretary's application, the district court rejected certain evidence proferred by the Secretary with respect to other violations of Section 401 which the Secretary alleged that the union had committed in the course of the election, on the ground that the Secretary's action was not supported by any complaint from a union member with respect to these alleged violations. (See § 402(a), 29 U.S.C. § 482(a)).[2]

Plaintiff attacks

(1) the refusal to set aside the election, and

(2) the rejection of evidence as to the additional violations.

Defendant attacks

(1) the holding that the union's by-laws violated Section 401(e), and

(2) the issuance of an injunction against future violations.

We hold that the lower court was correct in its ruling with respect to the additional alleged violations,

---

the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this subchapter."

[2] "(a) A member of a labor organization (1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or (2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide."

but reverse the decision that the by-law was violative of Section 401(e). For the reason last stated and also for the reason that the court had no power to enjoin future violations, we set aside the injunction which the district court ordered.

I

We turn first to the district court's determination that the questioned by-law constituted a violation of the statute.

The by-law provides:

> "In order to be eligible for nomination as an officer, a candidate must possess the following qualifications: (1) He must be a member of the Union in continuous good standing for a period of two years immediately preceding his nomination; (2) He must be a member of either the Assembly or the Executive Board, or else, at some time in the past, have served at least one year on either the Executive Board, the Assembly, or the old Shop Delegates Council. In order to be eligible for nomination as a member of the Executive Board, as a delegate to the Assembly, or as a department delegate, a candidate must be a member of the Union in continuous good standing for a period of at least one year immediately preceding his nomination."

The aspect of the clause to which the Secretary takes exception is the requirement of previous service on the Executive Board, in the Assembly, or on the Shop Delegates Council.[3]

Section 401(e) provides that "every member in good standing shall be eligible to be a candidate and to hold office (subject to * * * reasonable qualifications uniformly imposed) * * *." 29 U.S.C. § 481(e). The issue which we must resolve is whether the eligibility restrictions of the union by-law are "reasonable qualifications."

---

[3] Since service on the Executive Board is confined to officers and members of the Assembly, the provision of the by-law for previous service on the Executive Board may be disregarded.

In determining this question we do not regard the "clearly erroneous" rule as controlling, see *Donaldson Publishing Co.* v. *Bregman, Vocco & Conn, Inc.*, 375 F. 2d 639, 641 (2d Cir. 1967); *Baranow* v. *Gibralter Factors Corp.*, 366 F. 2d 584, 587-89 (2d Cir. 1966); *Mamiye Bros.* v. *Barber S.S. Lines, Inc.*, 360 F. 2d 774, 776-78 (2d Cir.), cert. denied, 385 U.S. 835 (1966), although even if it were, we are left with "the definite and firm conviction that a mistake has been committed." See *United States* v. *United States Gypsum Co.*, 333 U.S. 364, 394-95 (1948).

In deciding the issue of reasonableness we must keep in mind the fact that the Act did not purport to take away from labor unions the governance of their own internal affairs and hand that governance over either to the courts or to the Secretary of Labor. The Act strictly limits official interference in the internal affairs of unions. See, *Calhoon* v. *Harvey*, 379 U.S. 134 (1964); *Gurton* v. *Arons*, 339 F. 2d 371 (2d Cir. 1964). The Act prescribes only certain basic minima and leaves the area not covered by these minimum prescriptions to the decisions of the unions themselves.

> "Congress intentionally created a narrow remedy under Title IV of the LMRDA so that interference with union elections and management would be kept at a minimum." *Wirtz* v. *Locals 410, 410A, 410B & 410C, Int'l Union of Operating Engineers*, 366 F. 2d 438, 442 (2d Cir. 1966).

The Supreme Court, in discussing Title IV, referred to "the general congressional policy to allow unions great latitude in resolving their own internal controversies." *Calhoon* v. *Harvey*, supra, 379 U.S. at 140.

The legislative policy of leaving to the unions the maximum degree of self-government is emphasized at many points in the legislative history.

In Senate Report No. 1684, 85th Cong., 2d Sess. 12-15 (1958), for example, the following appears:

> "The committee gave careful study to various proposals providing for the conduct of union elections by the National Labor Relations Board upon the request

of a small percentage of the members. The committee rejected this approach for two reasons.

"One fundamental objection is that these proposals turn over to an arm of the State the responsibility for carrying on the internal governmental processes of voluntary associations without any showing that the union officers and members are incompetent or corrupt. Such a measure does not promote freedom or democracy. It reduces self-government. It denies the private responsibilty and self-determination which lie at the heart of a voluntary association." Reprinted in United States Department of Labor, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, p. 702 (1964). [Cited hereafter as "Legislative History".]

In Senate Report No. 187, the Committee referred to the following "principles" as governing the proposed legislation:

"1. The committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization. Trade unions have made a commendable effort to correct internal abuses; hence the committee believes that only essential standards should be imposed by legislation. Moreover, in establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents.

"2. Given the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully competent to regulate union affairs. The committee strongly opposes any attempt to prescribe detailed procedures and standards for the conduct of union business. Such paternalistic regulation would weaken rather than strengthen the labor movement; it would cross over into the area of trade union licensing and destroy union independence." S. Rep. No. 187, 86th Cong., 1st Sess. 7 (1959), reprinted in U.S. Code Congressional and Administrative News, 2323 (1959).

Turning to the application of these policies to the present case, we hold that it is not self-evident that basic minimum principles of union democracy require that every union entrust the administration of its affairs to untrained and inexperienced rank and file members. Local 6 has over 26,000 members. Its assets amount to more than $2,300,000. Its Welfare, Pension and Medical Funds have assets of over $30,000,000. The local has jurisdiction of hotel, motel and club employees throughout New York City and thus deals with hundreds of employers on behalf of employees having a number of differing skills as well as on behalf of semi-skilled and unskilled employees. It does not seem to us to be surprising that the union should hesitate to permit a cook or a waiter or a dishwasher without any training or experience in the management of union affairs to take on responsibility for the complex and difficult problems of administration of this union.

Membership in the union's Assembly, which under the union's by-law is the principal basis for eligibility for positions of greater responsibility, provides an opportunity for meeting with the officers and with other more experienced members for discussion and consideration of contract negotiations, enforcement of contract clauses, union finances and many other aspects of union administration. Members of the Assembly are also members of district councils and they participate there in the work of the various committees which deal with all aspects of union problems.

We do not believe that it is unreasonable for a union to condition candidacy for offices of greater responsibility upon a year of the kind of experience and training that a union member will acquire in a position such as that of membership in Local 6's Assembly.

The by-laws provide a procedure for their amendment. If the rank and file members of the union had felt at any time during the many years in which the eligibility restrictions has been in effect that they were being unjustly barred from office they could have sought to amend the restrictive provision. The record shows no attempt to bring about such an amendment.

The Secretary of Labor makes much of the fact that only about 1,700 members of the union are eligible for election to the 31 elective offices. However, when this number is combined with the fact that all members in good standing for one year have the opportunity to become eligible for office by getting themselves elected to seats in the four hundred-odd member Assembly, the numbers, per se, do not seem to us to establish unreasonableness.

It is not the function of the Secretary to determine what prescribed qualifications for office will best serve the purposes of union democracy nor to dictate what policy unions should follow in limiting candidacy for union office. The union's own rules as to eligibility must prevail unless they impose unreasonable qualifications. We are persuaded that in the present case the Secretary has trespassed upon an area of union governance which is left by the statute to the union's decision. We do not believe that a proper reading of the statute in the light of its history can justify the Secretary's finding that the union has violated Section 401 by adopting the contested eligibility requirements.

Since we have determinted that the by-law is a reasonable qualification, it is not necessary to decide whether this restriction on candidates "may have affected the outcome" of the election. § 402(c), 29 U.S.C. § 482(c). Accordingly, we do not deal with that issue.

II

The Secretary's complaint sought to set aside the election on three other grounds in addition to the restrictive by-law: that the union failed to give adequate notice of the composition of the election districts; that there was improper interference with the members' right to vote for and support candidates of their choice; and that certain offices were not filled by election.

On defendants' motion these additional grounds were stricken from the complaint by Judge McLean. Judge Wyatt at the trial refused the Secretary's offer of proof with respect to these additional allegations.

We uphold the rejection of the additional allegations on the ground relied on by Judge McLean in the district court, namely, that no member of the union filed with the Secretary any complaint as to these items. Section 402(a) and (b), 29 U.S.C. § 482(a) and (b), provide that:

> "(a) A member of a labor organization—
>
> "(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body,
>
> * * * *
>
> may file a complaint with the Secretary * * * alleging the violation of any provision of section 481 of this title * * *.
>
> "(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall * * * bring a civil action * * * to set aside the invalid election * * *."

It thus appears from the language of the statute itself that the Secretary may proceed to vindicate only those violations with respect to which he has received complaints. The legislative history reveals that Congress intended that the Secretary should have the power to bring an action only after a complaining member has exhausted his union remedies. See, for example, remarks of Senator Kennedy, June 12, 1958, Legislative History, supra, at 1093; S. Rep. No. 1684, 85th Cong., 2d Sess. (1958), reprinted in Legislative History, supra, at 701.

The Secretary argues strongly for a general power to protect the public interest, but nothing in the statute or in its legislative background suggests the existence of any such general power. The Secretary's function is, in Senator Kennedy's words, to act as "the [complaining] union member's lawyer." See Legislative History, supra, at 1093.

A suit to declare a union election void "may only be brought after a union member has made a proper complaint to the Secretary," *Wirtz* v. *Local Unions 410, etc.*,

supra, 366 F. 2d at 442; accord, *Wirtz* v. *Locals 9, 9-A, & 9-B, Int'l Union of Operating Engineers*, 366 F. 2d 911 (10th Cir. 1966), vacated as moot, 35 U.S.L. Week 3403 (U.S. May 15, 1967), —— U.S. —— (1967); see *Wirtz* v. *Local 191, Int'l Bhd. of Teamsters*, 321 F. 2d 445, 448 (2d Cir. 1963).

III

The trial judge, though he refused to void the election, enjoined the union from applying its restrictive by-law in future elections. The injunction must be set aside, not only because we hold the by-law not violative of Section 401(e), but also because, as the Secretary concedes, the court has no power under the Act to issue such an injunction.

W. Willard Wirtz, etc. v. *Hotel, Motel and Club Employees Union, Local 6*

I concur.

July 6, 1967. WF.

I concur; with opinion of my own.

DIMOCK, *District Judge* (Concurring): I concur in the majority's holding in so far as it disapproves an injunction and its omission to disturb the district court's denial of the Secretary's application to set aside the election.

My concurrence in the elimination of the provision for the injunction is based upon the Secretary's concession of lack of power in the district court.

Though I concur also in the majority's omission to disturb the judgment in so far as it fails to set aside the election, I reach the result on different grounds.

The district court held that the qualifications upon candidacy were not reasonable within the terms of section 401(e) but that it could not make the necessary statutory finding that the violation of section 401 may

have affected the outcome of the election. The district court, therefore, failed to set aside the election. My brethren hold that the district court erred in finding the qualification unreasonable and thus agree to affirm the judgment denying the setting aside of the election without reaching the question whether the qualifications upon candidacy may have affected its outcome.

I agree with the district court that the qualifications were unreasonable and thus will reach the question whether the district court was right in refusing to find that the violation of section 401 may have affected the outcome of the election, the statutory basis for setting the election aside.

Irrespective of the provisions of Rule 52(a) F.R.Civ.P. that findings of fact shall not be set aside unless clearly erroneous, I agree with the district court's findings (a) that the only way to attain office in the union was through membership in the Assembly, that the only candidates that won such election were those who ran on Row A, the administration ticket, and that the only way they could run on Row A was to be selected by the administration, and (b) that "dissidents could not have become eligible to be opposing candidates for office and effective opposition was thus sharply curtailed". When it comes to the question of the findings' inviolability as not "clearly erroneous", I can see no escape from the effect of the rule. We are not here faced with findings of fact to be drawn from a set of cold documents. This is a case where the question before the district court was the practical effect of the rules of a union. It seems to me to be made for the "not clearly erroneous rule." The effect of the restrictions does not depend entirely on their letter. When Judge Wyatt found that dissidents could not have become opposing candidates for office he was expressing the distillation of oral testimony about what happened in a particular hotel or a particular caucus of waiters or kitchen helpers or chamber maids. It discourages thorough work by a judge of first instance for an appellate court lightly to reject a finding based on the feeling for a case that the trial judge can get by patient listening to evidence of what is behind the written documents.

I pass to the issue not reached by the majority: the correctness of Judge Wyatt's opinion and judgment in so far as it holds that it cannot be found that the violation of Section 401 with respect to qualifications of candidates affected the outcome of the election. I accept Judge Wyatt's excellent opinion and content myself with simply saying so since the subject does not seem to me to have sufficient precedential value to warrant repetition of what he has said. Though the majority hold the election good because the qualification was reasonable and I maintain that it was good because the qualification, though unreasonable, did not affect it, we reach the same result and I concur in that result.

While I thus agree with the majority that the district court was right in omitting to grant the Secretary's prayer to set aside the election and that the district court was wrong in awarding an injunction, I disagree with the majority as to the form of our mandate.

The statement preceding the majority opinion recites that the appeals are from a judgment (a) which was entered upon a decision * * * (2) holding that, though a certain by-law of the defendant union limiting candidacy for union office violated section 401(e) of the Act, 29 U.S.C. § 481(e), an election in which the by-law was applied could not be declared void under the provisions of § 402(c) because plaintiff failed to show that the violation of section 401(e) "may have affected the outcome" of the election and (b) which enjoined (3) the application of the questioned by-law to future election. The statement ends with the expression "Affirmed as to (1); reversed as to (2) and (3)".

The statement thus properly draws a distinction between the decision and the judgment. As said by Judge Leibell in *Winkelman* v. *General Motors Corporation*, D.C.S.D.N.Y., 48 F. Supp. 490 (1942), at 494, "The Federal Rules of Civil Procedure make a clear distinction between the decision (the Findings of Fact and Conclusions of Law) and the judgment." As appears from Rule 52(a) F.R.Civ.P. "[T]he court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment

* * *." The statement preceding the opinion in the instant case, purports, however, to affirm and reverse parts of the "decision" of the court below. Though the word appears again, this time in the opinion itself, appeal does not lie from a finding or conclusion as such. *Breeding Motor Freight Lines* v. *Reconstruction Finance Corporation*, 172 F. 2d 416, 425, 10 Cir. (1949).* That the word "decision" is not used here as a conversational equivalent of "judgment" appears from the fact that its use affects the result. If the appeal had been from the judgment, the judgment would have been reversed in only one respect instead of being reversed in the two respects in which the statement purports to reverse the decision. This arises from the fact that the majority of this court agree with the judgment of the court below that the Secretary's prayer for a setting aside of the election should be denied but disagree with the court below as to the decision giving the reason for denying the prayer. The district court said that the prayer should be denied because, though the candidacy restriction violated the law, it could not be said that it might have affected the election, while the majority says that the prayer should be denied because the candidacy restriction did not violate the law and, therefore, does not reach the question of effect on the election. The statement preceding the opinion, which would have the effect of affirming the lower court's judgment refusing to grant the prayer, purports, however, to reverse the lower court's decision as to its reason.

The result of the majority holdings and of my foregoing concurring opinion should be expressed in the same direction:

The judgment is modified so as to provide simply for dismissal of the complaint and, as so modified, affirmed.

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* The word "decision", as used in Sections 1291 and 1292 of Title 28 of the United States Code defining jurisdiction of the Court of Appeals, refers to the judgment or other final sentence of the court below. Ex Parte Tiffany, 252 U.S. 32, (1919); In re Forstner Chain Corporation, 177 F. 2d 572, 1 Cir. (1949).

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-eighth day of July one thousand nine hundred and [seven].

Present: Hon. PAUL R. HAYS, Hon. WILFRED FEINBERG, Circuit Judges; Hon. EDWARD J. DIMOCK, District Judge.

W. WILLARD WIRTZ, Secretary of Labor, United States Department of Labor, PLAINTIFF-APPELLANT

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6
DEFENDANT-APPELLEE

Appeal from the United States District Court for the Southern District of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is modified in accordance

with the opinion of this court, and as so modified said judgment be and it hereby is affirmed.

A. DANIEL FUSARO,
Clerk.

By VINCENT A. CARLIN,
Chief Deputy Clerk.

A true copy.

A. DANIEL FUSARO,
Clerk.

Judgment entered September 22, 1967.

JOHN J. OLEAR, JR.
Clerk.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

W. WILLARD WIRTZ, Secretary of Labor, United States Department of Labor, PLAINTIFF-APPELLANT

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6
DEFENDANT-APPELLEE

Petition for Rehearing

ROBERT M. MORGANTHAU, United States Attorney for the Southern District of New York, New York, N.Y., for plaintiff-appellant.

Petition denied.

PAUL R. HAYS,
WILFRED FEINBERG,
U.S.C.J.J

I dissent.

EDWARD J. DIMOCKS,
U.S.C.J.

SEPTEMBER 26, 1967.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

W. WILLARD WIRTZ, Secretary of Labor, United States Department of Labor, PLAINTIFF-APPELLANT

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6, DEFENDANT-APPELLEE

Petition for Rehearing In Banc

ROBERT M. MORGANTHAU, United States Attorney for the Southern District of New York, New York, N.Y., for plaintiff-appellant.

No active circuit judge having requested that a vote be taken on the suggestion that the case be reheard in banc, the same stands denied.

Chief Judge.

SEPTEMBER 20, 1967.

SUPREME COURT OF THE UNITED STATES

No. 891, October Term, 1967

W. WILLARD WIRTZ, Secretary of Labor, United States Department of Labor, PETITIONER

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6

ORDER ALLOWING CERTIORARI. — Filed January 29, 1968.

The petition herein for a writ of certiorari to the United States Court of Appeals for Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Marshall took no part in the consideration or decision of this petition.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1968 292736 635

SUPREME COURT, U. S.

FILED

No. 691

In the Supreme Court of the United States

OCTOBER TERM, 1967

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	3
Statement	3
Reasons for granting the writ	9
Conclusion	15
Appendix A	17
Appendix B	33
Appendix C	35
Appendix D	37
Appendix E	42
Appendix F	69
Appendix G	71

CITATIONS

Cases:

Calhoon v. *Harvey*, 379 U.S. 134	10
Goldberg v. *Amarillo General Drivers, etc., Local Union No. 577*, 214 F. Supp. 74	10
Wirtz v. *Local 30, International Union of Operating Engineers*, 242 F. Supp. 631, vacated, 366 F. 2d 438	10
Wirtz v. *Local 153, Glass Bottle Blowers Association*, 244 F. Supp. 745 vacated, 372 F. 2d 86, certiorari granted, 387 U.S. 904	10
Wirtz v. *Local 174, American Federation of Musicians*, 272 F. Supp. 294	9
Wirtz v. *Local Unions No. 9, etc., International Union of Operating Engineers*, 254 F. Supp. 980, affirmed, 366 F. 2d 911, vacated as moot, 387 U.S. 96	10
Wirtz v. *Local Unions No. 406, etc., International Union of Operating Engineers*, 254 F. Supp. 962	10

282-903—67——1

Statute:

Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. 401 *et seq.*:	Page
Sec. 2(a) (29 U.S.C. 401(a))	71
Sec. 2(b) (29 U.S.C. 401(b))	71
Sec. 2(c) (29 U.S.C. 401(c))	71
Sec. 401 (29 U.S.C. 481)	6
Sec. 401(a) (29 U.S.C. 481(a))	72
Sec. 401(b) (29 U.S.C. 481(b))	72
Sec. 401(c) (29 U.S.C. 481(c))	72
Sec. 401(d) (29 U.S.C. 481(d))	72
Sec. 401(e) (29 U.S.C. 481(e))	74
Sec. 401(f) (29 U.S.C. 481(f))	74
Sec. 401(g) (29 U.S.C. 481(g))	75
Sec. 401(h) (29 U.S.C. 481(h))	75
Sec. 401(i) (29 U.S.C. 481(i))	75
Sec. 402(a) (29 U.S.C. 482(a))	75
Sec. 402(b) (29 U.S.C. 482(b))	76
Sec. 402(c) (29 U.S.C. 482(c))	6, 76
Sec. 402(d) (29 U.S.C. 482(d))	77
Sec. 403 (29 U.S.C. 483)	77
Sec. 601(a) (29 U.S.C. 521(a))	77
Sec. 601(b) (29 U.S.C. 521(b))	77

Miscellaneous:

105 Cong. Rec. 885	11
Interim Report of the Select Committee on Improper Activities in the Labor or Management Field, S. Rep. No. 1417, 85th Cong., 2d Sess., p. 452	11

In the Supreme Court of the United States

OCTOBER TERM, 1967

No.

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the Secretary of Labor, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit, entered in this case on September 22, 1967.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, pp. 17–32) is reported at 381 F. 2d 500. The orders of that court denying the Secretary's petition for rehearing and suggestion for rehearing *en banc* (App. C, *infra*, pp. 35–36) are unreported. The opinion of the district court (App. E, *infra*, pp. 42–68) is reported at 265 F. Supp. 510; an earlier opinion of that court striking portions of the complaint (App. D, *infra*, pp. 37–41) is unreported.

JURISDICTION

The decision of the court of appeals (App. A, *infra*, p. 17) was rendered on July 28, 1967. A timely petition for rehearing and suggestion for rehearing *en banc* was denied on September 20, 1967 (App. C, *infra*, p. 35). Final judgment (App. B, *infra*, p. 33) was entered on September 22, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a union rule severely restricting the eligibility of members to become candidates for executive office—here a requirement of prior service in the union's legislative body—may be deemed a "reasonable" qualification under the Labor-Management Reporting and Disclosure Act of 1959, notwithstanding the unusual character of the rule and the finding that it effectively eliminates dissident candidates.

2. Whether a candidacy qualification "may have affected" the outcome of a union election within the meaning of the Act when it resulted in the disqualification of several nominees for union office and rendered approximately 93 percent of the membership ineligible to run for office.

3. Whether, when a complaint has been presented to the Secretary of Labor, he may allege violations which are disclosed by his investigation of the complaint, even though they were not charged in the union member's protest to the union.

STATUTE INVOLVED

The pertinent provisions of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. 401 *et seq.*, are printed in App. G, *infra*, pp. 71–78.

STATEMENT

1. Respondent local union represents bartenders, maids and kitchen and dining-room help employed by hotels, motels and clubs in New York City (App. 85a–87a).[1] The local, whose membership exceeds 27,000 (App. 57a–58a), is divided into geographical districts which elect delegates to the Assembly. Although described by the union's bylaws as its highest body (App. 271a), in actual practice the Assembly has served merely to approve reports and policies of the union's officers and executive board. The President of the union could not recall one instance in recent years in which the Assembly disapproved any action of the executive board (App. 94a). The Assembly usually meets only four times a year, three meetings lasting no more than two or three hours, the fourth for an entire day (App. 271a, 283a). Attendance at Assembly meetings is poor (App. 281a). Some Assembly members serve on negotiating committees and other bodies within the union which play a more active role in union affairs (App. 124a–128a). The only group to which all 400-odd members of the Assembly belong is the district council in each district, and this is a forum for internal union discussions

[1] "App." refers to plaintiff-appellant's appendix in the court of appeals.

rather than an organ of actual union government or administration (App. 127a–128a).

The Assembly, which has almost 400 members (App. 127a), consists of one representative for every 75 members of the union (App. 265a). The officers of the union are *ex officio* members (App. 263a, 266a). The by-law restriction here in issue provided that in order to be eligible to run for union office the candidate must have been a member of (a) the Assembly, (b) the executive board, or (c) the Shop Delegates Council (the legislative body of the union prior to 1951) (App. 269a).

Since 1951, when the present organization of the union was established, the Administration Party has controlled the union and the Assembly (App. 101a–105a). During this period, the Administration Party has always run a full slate for the Assembly, and every candidate on that slate has won in each election (App. 101a–105a). As the district court explained (App. E, *infra*, p. 53):

> In practice it was not possible to be elected to the Assembly except with the blessing of the Administration Party conferred by selection to run for the Assembly on Row A. This was doubtless in large part because there was never a full slate of opposing candidates for the Assembly. The candidates to run on Row A for the Assembly were selected by the incumbent group of officers and were put in nomination after caucuses of invited members, attended by officers. It was only natural that candidates selected to run on Row A for the Assembly would be supporters of

> the administration. All candidates on Row A were pledged to support each other. Dissidents could not be elected to the Assembly.

Thus, the district court found, "dissidents could not become eligible to be opposing candidates for office and effective opposition was thus sharply curtailed" (App. E, *infra,* p. 62).

In 1965, for the first time in 14 years, the Administration Party faced organized opposition in an election. A group calling itself the Membership Party nominated members to run for the four general offices—president, general organizer, secretary-treasurer and recording secretary (App. 249a, 273a), and also put up candidates for 13 of the 27 additional executive positions within the union to be elected from the various districts. However, of the four Membership Party nominees for general union office, one—the nominee for secretary-treasurer—was ruled ineligible because he did not meet the prior office-holding requirement, as were seven of the 13 Membership Party candidates for district office (App. 250a, 273a). The consequence was that the Membership Party ran candidates for only four of the 31 principal offices in the 1965 election—president, general organizer and business agent in two districts (App. 275a)—while the administration ran a full slate (App. 275a). About 40 percent of the eligible membership voted at the election (App. 57a, 58a, 275a) and the entire administration slate won. Where administration candidates were opposed they won by margins of approximately 7 to 1 (App. 101a, 275a).

2. The Labor-Management Reporting and Disclosure Act of 1959 directs the federal district court, at the suit of the Secretary of Labor acting upon the complaint of a union member, to set aside a union election and order a new election under the supervision of the Secretary if the court finds that the Act was violated and that the violation "may have affected the outcome" of the election (Section 402(c), 29 U.S.C. 482(c)). This action was brought by the Secretary, on the complaint of a member of Local 6, to set aside the union's May 1965 election and to direct a supervised election. The Secretary alleged that the union had violated Section 401 of the Act, which provides that every member in good standing shall be eligible to be a candidate for and hold office, subject only to "reasonable qualifications" (App. 4a).

After trial, the district court held that the rule restricting candidacy to prior members of the Assembly was a violation of the Act. The court found that the effect of the rule was to curtail opposition, because in practice only candidates on the administration ticket could be elected to the Assembly (App. E, *infra,* pp. 62–63). Moreover, the court noted that under the union rules an officer could be appointed to fill a vacancy although he did not satisfy the eligibility requirement for election to office. Thus, the court found, "once such an officer is appointed, he automatically becomes a member of the Assembly and immediately becomes eligible to run thereafter for any union office. This enables the incumbent group to qualify members for elective office by a procedure not available to dissi-

dents" (App. E, *infra,* pp. 62–63). The court rejected the attempt of the union to justify its rule on the ground that the complexity of union problems requires that officers have some experience in union affairs: "the premise [is] that the membership at large cannot be trusted properly to evaluate union experience in casting election ballots. The philosophy of a free democratic society, expressed in the Act, does not tolerate such a premise" (E, *infra,* p. 61).

The district court, however, refused to order a supervised election, on the ground that it could not find that the violation of the Act "may have affected the outcome" of the union's 1965 election (App. E, *infra,* pp. 63–65). Although application of the prior office-holding requirement caused the disqualification of nine candidates, the court noted that there was, nevertheless, a contested election at which the Membership Party ran opposing candidates for president and nine other offices. Since all of the Membership Party candidates who were allowed to run lost by margins of 7 to 1 or better, the district court concluded that the presence of the disqualified nominees on the slate would not have changed the result. In its view, the Membership Party's failure at the rolls resulted from its lack of any "dramatic or important issue to rouse the membership against the incumbents" (App. E, *infra,* p. 65) and its failure to run a full slate of candidates for the Assembly.

The court of appeals upheld the district court's refusal to order a supervised election, but for different reasons. The majority of the court of appeals ruled

that the prior office-holding requirement was lawful, commenting that: "It does not seem to us to be surprising that the union should hesitate to permit a cook or a waiter or a dish-washer without any training or experience in the management of union affairs to take on responsibility for the complex and difficult problems of administration of this union" (App. A, *infra*, p. 24). The concurring judge thought that the district court's findings as to the effect of the rule in curtailing opposition—not alluded to by the majority—established the unreasonableness of the requirement, but accepted the district court's refusal to find that the outcome of the election might have been affected thereby (App. A, *infra*, pp. 28–32).

3. The Secretary's complaint had alleged three violations in addition to application of the prior office-holding rule: failure to give adequate and timely notice of the composition of election districts, improper interference with the members' right to vote for and support candidates, and failure to fill certain union offices by election (App. 6a). The district court struck these allegations from the complaint, on the ground that the union member had not protested the additional violations in the internal complaint which triggered the proceeding (App. D, *infra*). At trial, the Secretary offered to prove that, prior to bringing this suit, officials of the Department of Labor called the union's attention to two of the three additional violations (App. 115a–119a). The district court, however, excluded the evidence and declined to change its ruling limiting the scope of the complaint (App. 120a, 233a–235a). The court of appeals agreed, on the

ground that no member of the union had filed with the Secretary a complaint addressed to the additional violations specified in the Secretary's suit. The court rejected the Secretary's argument that he has a duty in enforcing the statute to protect the public interest, ruling that the Secretary's only function is to act as the "union member's lawyer" and that he may, therefore, only litigate points initially raised by a union member (App. A, *infra*, p. 27).

REASONS FOR GRANTING THE WRIT

1. The case raises an important question in the administration of Title IV of the Labor-Management Reporting and Disclosure Act of 1959—the extent to which a union remains free to restrict the right of its members to run for elective office by imposing narrowly restrictive candidacy qualifications, and, specifically, whether a requirement of prior office-holding is "reasonable" under the Act when it severely curtails the opportunity to elect opposition candidates. Although no direct conflict among circuits has yet arisen on the legality of the type of qualification here involved, the decision below represents a significant departure from the approach of most courts and a prompt and authoritative answer is necessary in view of the volume of litigation under the Act and the fundamental character of the question.[2] The concept

[2] The decision of the court of appeals has already been followed by one district court (*Wirtz* v. *Local 174, American Federation of Musicians*, 272 F. Supp. 294 (E.D. La.)), and may prove dispositive of the Secretary's pending action against the National Maritime Union in the Southern District of New York (Civil Action No. 66 Civ. 4519).

of reasonable qualifications is indeed central to the electoral provisions of the Act.

In determining whether a particular eligibility rule is a "reasonable qualification" it would seem obvious that the justification offered by the union must be weighed against the plain intent of the statute to afford a wide opportunity for union members to run for office, must be related to the practice of comparable organizations with elective officers, including other unions, and must be tested by its actual effect. That has been the approach followed by the Secretary of Labor, to whose "special knowledge and discretion" questions arising under Title IV are entrusted in the first instance (see *Calhoon* v. *Harvey*, 379 U.S. 134, 140), and these criteria have generally been applied by other courts—including the district court in the instant case—in ruling on the validity of restrictions on candidacy.[3] Yet, in the decision below, the majority of the court of appeals simply accepted respondent's asserted need to limit candidacy to those with experience and training in union affairs, without giving consideration to the unusual character of the chal-

[3] See, *e.g.*, *Goldberg* v. *Amarillo General Drivers, etc., Local Union No. 577*, 214 F. Supp. 74 (N.D. Tex.); *Wirtz* v. *Local Unions No. 406, etc., International Union of Operating Engineers*, 254 F. Supp. 962 (E.D. La.); *Wirtz* v. *Local 153, Glass Bottle Blowers Association*, 244 F. Supp. 745 (W.D. Pa.), vacated on other grounds, 372 F. 2d 86 (C.A. 3), certiorari granted, 387 U.S. 904; *Wirtz* v. *Local Unions No. 9, etc., International Union of Operating Engineers*, 254 F. Supp. 980 (D. Colo.), affirmed, 366 F. 2d 911 (C.A. 10), vacated as moot, 387 U.S. 96; *Wirtz* v. *Local 30, International Union of Operating Engineers*, 242 F. Supp. 631 (S.D.N.Y.), vacated on other grounds, 366 F. 2d 438 (C.A. 2).

lenged candidacy rule, in other local unions and elsewhere, or to its very substantial practical impact here.

In declaring that all union members in good standing were entitled to run for union office and to vote in union elections, subject only to "reasonable qualifications," Congress may well have barred any requirement of prior office-holding since—unlike a requirement related to age, length of membership in the union, or a clean criminal record—it is bound to disqualify the majority of the membership. So drastic a curtailment of democratic opportunity seems hard to square with the clearly expressed premise of Title IV: the desirability of "assuring democratic procedures in labor unions" and achieving "a revitalization of the democratic processes of labor unions." *Interim Report of the Select Committee on Improper Activities in the Labor or Management Field,* S. Rep. No. 1417, 85th Cong., 2d Sess., p. 452. Whatever the view of an earlier day, it is today accepted that onerous office-holding requirements have little or no place in a democratic electoral process. Radically limiting the field of possible candidates greatly impairs choice and opens the door to facile ways for the inside group to maintain control. It seems inconsistent with the objective of Title IV, which was to afford union members a "real opportunity to nominate opposing candidates." 105 Cong. Rec. 885 (remarks of Senator Kennedy).

The Secretary of Labor has not, however, gone so far in his administration of the Act. Nor is it neces-

sary, for present purposes, to argue that *no* prior office-holding requirement can ever be deemed reasonable under Title IV. It is enough to suggest that such a candidacy qualification must be scrutinized with great care and that the burden is on the proponents of the rule to justify the need for it. Tested by that standard, the requirement at bar falls short. It is not common in labor union experience.[4] As applied here, the rule disqualified more than 93% of the local's 27,300 members. And, what is more, on the basis of a careful analysis (App. E, *infra*, pp. 53, 62) fully supported by the record (App. 100a–105a, 250a–251a, 253a–254a, 256a–257a), the district court in this case found that the only members who could comply with the union's requirement of prior office-holding were those favored by the incumbents—this because, as a practical matter, only candidates for the Assembly who appeared on the administration slate were elected to the Assembly and hence eligible, under the union's rules, to run for executive office. This finding was not

[4] A study of the larger unions which was introduced in evidence showed that none of the 95 national and international unions whose membership exceeds 20,000 imposed a constitutional requirement that candidates for local union office have prior office-holding experience (App. 225a–227a, 229a–231a). One international union, the International Ladies' Garment Workers Union, has a constitutional provision limiting paid officerships in the locals to those who either have had previous union office experience or who have completed a training course. Only 32 of the 125 largest locals (those with 900 or more members) affiliated with the same International as respondent had any such requirement (App. 220a, 221a). And of the 66 local unions reporting receipts of over one million dollars in 1964, only respondent limited candidacy to prior office-holders with no alternative basis for qualification (App. 229a–230a).

disturbed by the court of appeals. Its ruling sustaining the requirement of prior office-holding thus amounts to a blanket endorsement of such restrictive rules—a view wholly at odds with the scheme of the Act.

The court of appeals stated: "It does not seem to us to be surprising that the union should hesitate to permit a cook or a waiter or a dish-washer without any training or experience in the management of union affairs to take on responsibility for the complex and difficult problems of administration of this union." (App. A, *infra*, p. 24.) But if, as we contend, the object of Title IV is to inject democratic processes into the management of union affairs, it does seem surprising that cooks, waiters and dishwashers should be barred on such a ground from running for office in their own union, when we remember that inexperienced individuals are perfectly free to seek political offices far more demanding and responsible than the offices at stake in a union election. A presumption that lack of prior office-holding establishes incapacity to seek executive office is opposed to accepted notions of democratic process.

Even on its own terms, the asserted justification fails. Former members of the old Shop Delegates Council who had not held that or any other office for at least 14 years were nonetheless eligible candidates for executive office—indeed, 1182 of the 1725 eligible candidates satisfied the requirement of prior office-

holding in this fashion.[5] Moreover, to fill vacancies union officials could appoint members of the union who had never satisfied the requirement of prior office-holding. Even if restricting candidacy to individuals with previous official experience could commend itself to the democratic ideals of the Act, the requirement in suit here is not reasonably designed to exclude the inexperienced. That is additional reason why, in our view, it should not be sustained.

2. This case raises two other issues of major importance in the administration of Title IV. The first is whether a candidacy requirement which disqualifies more than 90 percent of the union membership and among them several willing candidates can nonetheless survive by virtue of the provision of Section 402 (c) that an election will be set aside only if the violation "may have affected" its outcome. The second is whether in a suit to enforce Title IV the Secretary may allege violations not recited—either explicitly or implicitly—in the internal protest of the union member or the complaint filed with the Department of Labor which triggered the proceeding. Both questions (which we submit should be answered in the affirmative) have been briefed and argued to the Court in cases now awaiting decision. *Wirtz* v. *Local 153,* No. 57, this Term; *Wirtz* v. *Local Union No. 125,* No. 58, this Term. We urge their plenary consideration in the instant case only in the event that the Court fails to decide them in the other cases.

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[5] The figure of 1182 is computed by subtracting from the 1725 names estimated by the union to have been eligible to run in 1965 543 names from the union's list of members eligible by virtue of their Assembly service (App. 79a–83a).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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DECEMBER 1967.

282-903—67——2

APPENDIX A

United States Court of Appeals for the Second Circuit

No. 513—September Term, 1966

Argued June 13, 1967—Decided July 28, 1967

Docket No. 31272

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF-APPELLANT

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6 DEFENDANT-APPELLEE

Before HAYS and FEINBERG, Circuit Judges; DIMOCK, District Judge*

Appeals by both plaintiff and defendant from a judgment of the United States District Court for the Southern District of New York (a) which was entered upon a decision of Inzer B. Wyatt, *Judge,* (1) holding that certain union practices in connection with an election for union office could not be used as grounds for voiding the election under § 402(c) of the Labor Management Reporting and Disclosure Act of

*Of the Southern District of New York, sitting by designation.

1959, 29 U.S.C. § 482(c), because the action of the plaintiff Secretary of Labor was not based upon the complaint of a union member as required by § 402(a), 29 U.S.C. § 482(a), and (2) holding that, though a certain by-law of the defendant union limiting candidacy for union office violated § 401(e) of the Act, 29 U.S.C. § 481(e), an election in which the by-law was applied could not be declared void under the provisions of § 402(c) because plaintiff failed to show that the violation of Section 401(e) "may have affected the outcome" of the election, and (b) which enjoined (3) the application of the questioned by-law to future elections.

Affirmed as to (1); reversed as to (2) and (3).

ROBERT E. KUSHNER, Assistant United States Attorney (Robert M. Morganthau, United States Attorney for the Southern District of New York, and Martin P. Solomon, Assistant United States Attorney, on the brief), *for Appellant,*

JEROME B. LURIE, New York, New York (Cohn & Glickstein and Leonard Leibowitz, on the brief), *for Appellee.*

HAYS, *Circuit Judge:* Both plaintiff Secretary of Labor and defendant union appeal from a judgment of the United States District Court for the Southern District of New York in a case involving an election of officials of the defendant union. The district court held that a certain by-law of the union limiting candidacy for union office was violative of Section 401(e) of the Labor Management Reporting and Disclosure

Act of 1959, 29 U.S.C. § 481(e),[1] but declined to set aside, under the provisions of Section 402(c) of the Act, the election in which the by-law was applied because the Secretary failed to show that application of the questioned by-law "may have affected the outcome" of the election. However the district court enjoined the application of the by-law to future elections. During the course of the hearing on the Secretary's application, the district court rejected certain evidence proferred by the Secretary with respect to other violations of Section 401 which the Secretary

[1] "(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this subchapter."

alleged that the union had committed in the course of the election, on the ground that the Secretary's action was not supported by any complaint from a union member with respect to these alleged violations. (See § 402(a), 29 U.S.C. § 482(a)).[2]

Plaintiff attacks

(1) the refusal to set aside the election, and

(2) the rejection of evidence as to the additional violations.

Defendant attacks

(1) the holding that the union's by-laws violated Section 401(e), and

(2) the issuance of an injunction against future violations.

We hold that the lower court was correct in its ruling with respect to the additional alleged violations, but reverse the decision that the by-law was violative of Section 401(e). For the reason last stated and also for the reason that the court had no power to enjoin future violations, we set aside the injunction which the district court ordered.

---

[2] "(a) A member of a labor organization (1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or (2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide."

I

We turn first to the district court's determination that the questioned by-law constituted a violation of the statute.

The by-law provides:

> "In order to be eligible for nomination as an officer, a candidate must possess the following qualifications: (1) He must be a member of the Union in continuous good standing for a period of two years immediately preceding his nomination; (2) He must be a member of either the Assembly or the Executive Board, or else, at some time in the past, have served at least one year on either the Executive Board, the Assembly, or the old Shop Delegates Council. In order to be eligible for nomination as a member of the Executive Board, as a delegate to the Assembly, or as a department delegate, a candidate must be a member of the Union in continuous good standing for a period of at least one year immediately preceding his nomination."

The aspect of the clause to which the Secretary takes exception is the requirement of previous service on the Executive Board, in the Assembly, or on the Shop Delegates Council.[3]

Section 401(e) provides that "every member in good standing shall be eligible to be a candidate and to hold office (subject to * * * reasonable qualifications uniformly imposed) * * *." 29 U.S.C. § 481(e).

[3] Since service on the Executive Board is confined to officers and members of the Assembly, the provision of the by-law for previous service on the Executive Board may be disregarded.

The issue which we must resolve is whether the eligibility restrictions of the union by-law are "reasonable qualifications."

In determining this question we do not regard the "clearly erroneous" rule as controlling, see *Donaldson Publishing Co.* v. *Bregman, Vocco & Conn, Inc.*, 375 F. 2d 639, 641 (2d Cir. 1967); *Baranow* v. *Gibralter Factors Corp.*, 366 F. 2d 584, 587–89 (2d Cir. 1966); *Mamiye Bros.* v. *Barber S.S. Lines, Inc.*, 360 F. 2d 774, 776–78 (2d Cir.), cert. denied, 385 U.S. 835 (1966), although even if it were, we are left with "the definite and firm conviction that a mistake has been committed." See *United States* v. *United States Gypsum Co.*, 333 U.S. 364, 394–95 (1948).

In deciding the issue of reasonableness we must keep in mind the fact that the Act did not purport to take away from labor unions the governance of their own internal affairs and hand that governance over either to the courts or to the Secretary of Labor. The Act strictly limits official interference in the internal affairs of unions. See, *Calhoon* v. *Harvey*, 379 U.S. 134 (1964); *Gurton* v. *Arons*, 339 F. 2d 371 (2d Cir. 1964). The Act prescribes only certain basic minima and leaves the area not covered by these minimum prescriptions to the decisions of the unions themselves.

> "Congress intentionally created a narrow remedy under Title IV of the LMRDA so that interference with union elections and management would be kept at a minimum." *Wirtz* v. *Locals 410, 410A, 410B & 410C, Int'l Union of Operating Engineers*, 366 F. 2d 438, 442 (2d Cir. 1966).

The Supreme Court, in discussing Title IV, referred to "the general congressional policy to allow unions

great latitude in resolving their own internal controversies." *Calhoon* v. *Harvey*, supra, 379 U.S. at 140.

The legislative policy of leaving to the unions the maximum degree of self-government is emphasized at many points in the legislative history.

In Senate Report No. 1684, 85th Cong., 2d Sess. 12–15 (1958), for example, the following appears:

> "The committee gave careful study to various proposals providing for the conduct of union elections by the National Labor Relations Board upon the request of a small percentage of the members. The committee rejected this approach for two reasons.
>
> "One fundamental objection is that these proposals turn over to an arm of the State the responsibility for carrying on the internal governmental processes of voluntary associations without any showing that the union officers and members are incompetent or corrupt. Such a measure does not promote freedom or democracy. It reduces self-government. It denies the private responsibility and self-determination which lie at the heart of a voluntary association." Reprinted in United States Department of Labor, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, p. 702 (1964). [Cited hereafter as "Legislative History".]

In Senate Report No. 187, the Committee referred to the following "principles" as governing the proposed legislation:

> "1. The committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization. Trade unions have made a commendable effort to correct internal abuses; hence the committee believes that only essential standards should be imposed by legislation. More-

over, in establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents.

"2. Given the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully competent to regulate union affairs. The committee strongly opposes any attempt to prescribe detailed procedures and standards for the conduct of union business. Such paternalistic regulation would weaken rather than strengthen the labor movement; it would cross over into the area of trade union licensing and destroy union independence." S. Rep. No. 187, 86th Cong., 1st Sess. 7 (1959), reprinted in U.S. Code Congressional and Administrative News, 2323 (1959).

Turning to the application of these policies to the present case, we hold that it is not self-evident that basic minimum principles of union democracy require that every union entrust the administration of its affairs to untrained and inexperienced rank and file members. Local 6 has over 26,000 members. Its assets amount to more than $2,300,000. Its Welfare, Pension and Medical Funds have assets of over $30,000,000. The local has jurisdiction of hotel, motel and club employees throughout New York City and thus deals with hundreds of employers on behalf of employees having a number of differing skills as well as on behalf of semi-skilled and unskilled employees. It does not seem to us to be surprising that the union should hesitate to permit a cook or a waiter or a dishwasher without any training or experience in the management of union affairs to take on responsibility for the complex and difficult problems of administration of this union.

Membership in the union's Assembly, which under the union's by-law is the principal basis for eligibility for positions of greater responsibility, provides an opportunity for meeting with the officers and with other more experienced members for discussion and consideration of contract negotiations, enforcement of contract clauses, union finances and many other aspects of union administration. Members of the Assembly are also members of district councils and they participate there in the work of the various committees which deal with all aspects of union problems.

We do not believe that it is unreasonable for a union to condition candidacy for offices of greater responsibility upon a year of the kind of experience and training that a union member will acquire in a position such as that of membership in Local 6's Assembly.

The by-laws provide a procedure for their amendment. If the rank and file members of the union had felt at any time during the many years in which the eligibility restriction has been in effect that they were being unjustly barred from office they could have sought to amend the restrictive provision. The record shows no attempt to bring about such an amendment.

The Secretary of Labor makes much of the fact that only about 1,700 members of the union are eligible for election to the 31 elective offices. However, when this number is combined with the fact that all members in good standing for one year have the opportunity to become eligible for office by getting themselves elected to seats in the four hundred-odd member Assembly, the numbers, per se, do not seem to us to establish unreasonableness.

It is not the function of the Secretary to determine what prescribed qualifications for office will best serve the purposes of union democracy nor to dictate what policy unions should follow in limiting candidacy for union office. The union's own rules as to eligibility must prevail unless they impose unreasonable qualifications. We are persuaded that in the present case the Secretary has trespassed upon an area of union governance which is left by the statute to the union's decision. We do not believe that a proper reading of the statute in the light of its history can justify the Secretary's finding that the union has violated Section 401 by adopting the contested eligibility requirements.

Since we have determined that the by-law is a reasonable qualification, it is not necessary to decide whether this restriction on candidates "may have affected the outcome" of the election. § 402(c), 29 U.S.C. § 482(c). Accordingly, we do not deal with that issue.

II

The Secretary's complaint sought to set aside the election on three other grounds in addition to the restrictive by-law: that the union failed to give adequate notice of the composition of the election districts; that there was improper interference with the members' right to vote for and support candidates of their choice; and that certain offices were not filled by election.

On defendants' motion these additional grounds were stricken from the complaint by Judge McLean. Judge Wyatt at the trial refused the Secretary's offer of proof with respect to these additional allegations.

We uphold the rejection of the additional allegations on the ground relied on by Judge McLean in

the district court, namely, that no member of the union filed with the Secretary any complaint as to these items. Section 402 (a) and (b), 29 U.S.C. § 482 (a) and (b), provide that:

> "(a) A member of a labor organization—
> "(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body,
>
> * * * * * *
>
> may file a complaint with the Secretary * * * alleging the violation of any provision of section 481 of this title * * *.
>
> "(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall * * * bring a civil action * * * to set aside the invalid election * * *."

It thus appears from the language of the statute itself that the Secretary may proceed to vindicate only those violations with respect to which he has received complaints. The legislative history reveals that Congress intended that the Secretary should have the power to bring an action only after a complaining member has exhausted his union remedies. See, for example, remarks of Senator Kennedy, June 12, 1958, Legislative History, supra, at 1093; S. Rep. No. 1684, 85th Cong., 2d Sess. (1958), reprinted in Legislative History, supra, at 701.

The Secretary argues strongly for a general power to protect the public interest, but nothing in the statute or in its legislative background suggests the existence of any such general power. The Secretary's function is, in Senator Kennedy's words, to act as "the [complaining] union member's lawyer." See Legislative History, supra, at 1093.

A suit to declare a union election void "may only be brought after a union member has made a proper complaint to the Secretary," *Wirtz* v. *Local Unions 410, etc.*, supra, 366 F. 2d at 442; accord, *Wirtz* v. *Locals 9, 9–A, & 9–B, Int'l Union of Operating Engineers*, 366 F. 2d 911 (10th Cir. 1966), vacated as moot, 35 U.S.L. Week 3403 (U.S. May 15, 1967), —— U.S. —— (1967); see *Wirtz* v. *Local 191, Int'l Bhd. of Teamsters*, 321 F. 2d 445, 448 (2d Cir. 1963).

III

The trial judge, though he refused to void the election, enjoined the union from applying its restrictive by-law in future elections. The injunction must be set aside, not only because we hold the by-law not violative of Section 401(e), but also because, as the Secretary concedes, the court has no power under the Act to issue such an injunction.

W. Willard Wirtz, etc. v. *Hotel, Motel and Club Employees Union, Local 6*

I concur.

WF.

July 6, 1967.
I concur; with opinion of my own.

DIMOCK, *District Judge* (Concurring): I concur in the majority's holding in so far as it disapproves an injunction and its omission to disturb the district court's denial of the Secretary's application to set aside the election.

My concurrence in the elimination of the provision for the injunction is based upon the Secretary's concession of lack of power in the district court.

Though I concur also in the majority's omission to disturb the judgment in so far as it fails to set aside the election; I reach the result on different grounds.

The district court held that the qualifications upon candidacy were not reasonable within the terms of section 401(e) but that it could not make the necessary statutory finding that the violation of section 401 may have affected the outcome of the election. The district court, therefore, failed to set aside the election. My brethren hold that the district court erred in finding the qualification unreasonable and thus agree to affirm the judgment denying the setting aside of the election without reaching the question whether the qualifications upon candidacy may have affected its outcome.

I agree with the district court that the qualifications were unreasonable and thus will reach the question whether the district court was right in refusing to find that the violation of section 401 may have affected the outcome of the election, the statutory basis for setting the election aside.

Irrespective of the provisions of Rule 52(a) F.R.Civ.P. that findings of fact shall not be set aside unless clearly erroneous, I agree with the district court's findings (a) that the only way to attain office in the union was through membership in the Assembly, that the only candidates that won such election were those who ran on Row A, the administration ticket, and that the only way they could run on Row A was to be selected by the administration, and (b) that "dissidents could not have become eligible to be opposing candidates for office and effective opposition was thus sharply curtailed". When it comes to the question of the findings' inviolability as not "clearly erroneous", I can see no escape from the

effect of the rule. We are not here faced with findings of fact to be drawn from a set of cold documents. This is a case where the question before the district court was the practical effect of the rules of a union. It seems to me to be made for the "not clearly erroneous rule." The effect of the restrictions does not depend entirely on their letter. When Judge Wyatt found that dissidents could not have become opposing candidates for office he was expressing the distillation of oral testimony about what happened in a particular hotel or a particular caucus of waiters or kitchen helpers or chamber maids. It discourages thorough work by a judge of first instance for an appellate court lightly to reject a finding based on the feeling for a case that the trial judge can get by patient listening to evidence of what is behind the written documents.

I pass to the issue not reached by the majority: the correctness of Judge Wyatt's opinion and judgment in so far as it holds that it cannot be found that the violation of Section 401 with respect to qualifications of candidates affected the outcome of the election. I accept Judge Wyatt's excellent opinion and content myself with simply saying so since the subject does not seem to me to have sufficient precedential value to warrant repetition of what he has said. Though the majority hold the election good because the qualification was reasonable and I maintain that it was good because the qualification, though unreasonable, did not affect it, we reach the same result and I concur in that result.

While I thus agree with the majority that the district court was right in omitting to grant the Secretary's prayer to set aside the election and that the district court was wrong in awarding an injunction, I

disagree with the majority as to the form of our mandate.

The statement preceding the majority opinion recites that the appeals are from a judgment (a) which was entered upon a decision * * * (2) holding that, though a certain by-law of the defendant union limiting candidacy for union office violated section 401(e) of the Act, 29 U.S.C. § 481(e), an election in which the by-law was applied could not be declared void under the provisions of § 402(c) because plaintiff failed to show that the violation of section 401(e) "may have affected the outcome" of the election and (b) which enjoined (3) the application of the questioned by-law to future election. The statement ends with the expression "Affirmed as to (1); reversed as to (2) and (3)".

The statement thus properly draws a distinction between the decision and the judgment. As said by Judge Leibell in *Winkelman* v. *General Motors Corporation,* D.C.S.D.N.Y., 48 F. Supp. 490 (1942), at 494, "The Federal Rules of Civil Procedure make a clear distinction between the decision (the Findings of Fact and Conclusions of Law) and the judgment." As appears from Rule 52(a) F.R.Civ.P. "[T]he court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment * * *." The statement preceding the opinion in the instant case, purports, however, to affirm and reverse parts of the "decision" of the court below. Though the word appears again, this time in the opinion itself, appeal does not lie from a finding or conclusion as such. *Breeding Motor Freight Lines* v. *Reconstruction Finance Corpora-*

tion, 172 F. 2d 416, 425, 10 Cir. (1949).* That the word "decision" is not used here as a conversational equivalent of "judgment" appears from the fact that its use affects the result. If the appeal had been from the judgment, the judgment would have been reversed in only one respect instead of being reversed in the two respects in which the statement purports to reverse the decision. This arises from the fact that the majority of this court agree with the judgment of the court below that the Secretary's prayer for a setting aside of the election should be denied but disagree with the court below as to the decision giving the reason for denying the prayer. The district court said that the prayer should be denied because, though the candidacy restriction violated the law, it could not be said that it might have affected the election, while the majority says that the prayer should be denied because the candidacy restriction did not violate the law and, therefore, does not reach the question of effect on the election. The statement preceding the opinion, which would have the effect of affirming the lower court's judgment refusing to grant the prayer, purports, however, to reverse the lower court's decision as to its reason.

The result of the majority holdings and of my foregoing concurring opinion should be expressed in the same direction:

The judgment is modified so as to provide simply for dismissal of the complaint and, as so modified, affirmed.

---

*The word "decision", as used in Sections 1291 and 1292 of Title 28 of the United States Code defining jurisdiction of the Court of Appeals, refers to the judgment or other final sentence of the court below. Ex Parte Tiffany, 252 U.S. 32, (1919); In re Forstner Chain Corporation, 177 F. 2d 572, 1 Cir. (1949).

APPENDIX B

United States Court of Appeals for the Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-eighth day of July one thousand nine hundred and [seven].

Present: Hon. PAUL R. HAYS, Hon. WILFRED FEINBERG, Circuit Judges; Hon. EDWARD J. DIMOCK, District Judge.

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF-APPELLANT

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6, DEFENDANT-APPELLEE

Appeal from the United States District Court for the Southern District of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said Dis-

trict Court be and it hereby is modified in accordance with the opinion of this court, and as so modified said judgment be and it hereby is affirmed.

A. DANIEL FUSARO,
Clerk.

By VINCENT A. CARLIN,
Chief Deputy Clerk.

A true copy.

A. DANIEL FUSARO,
Clerk.

Judgment entered September 22, 1967.

JOHN J. OLEAR, Jr.
Clerk.

APPENDIX C

United States Court of Appeals for the Second Circuit

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF-APPELLANT

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6, DEFENDANT-APPELLEE

Petition for Rehearing

ROBERT M. MORGANTHAU, United States Attorney for the Southern District of New York, New York, N.Y., for plaintiff-appellant.

Petition denied.

PAUL R. HAYS,
WILFRED FEINBERG,
U.S.C.J.J.

I dissent.

EDWARD J. DIMOCK,
U.S.D.J.

SEPTEMBER 26, 1967.

United States Court of Appeals for the Second Circuit

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF-APPELLANT

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6, DEFENDANT-APPELLEE

Petition for Rehearing In Banc

ROBERT M. MORGANTHAU, United States Attorney for the Southern District of New York, New York, N.Y., for plaintiff-appellant.

No active circuit judge having requested that a vote be taken on the suggestion that the case be reheard in banc, the same stands denied.

Chief Judge.

SEPTEMBER 20, 1967.

APPENDIX D

United States District Court for the Southern District of New York

66 Civ. 626

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6, DEFENDANT

OPINION

MCLEAN, *D.J.*: This is an action by the Secretary of Labor, pursuant to 29 U.S.C. § 482(b) for a judgment declaring an election of officers of defendant union held on May 19, 1965 to be null and void. Defendant moves (1) to dismiss the action for failure to join the union officers as defendants, and (2) in the alternative, to strike paragraphs 8(c), 8(d) and 9 of the complaint.

The ground of the first motion is that the officers elected at the election in question are indispensable parties, because their rights will be affected by the determination made in this action. It seems clear that the statute does not contemplate their joinder, for it provides that the action shall be brought "against the labor organization as an entity." 29 U.S.C. § 482(b). But defendant says that the statute deprives the union

officers of due process of law and is therefore unconstitutional.

This same contention, phrased in very much the same way, has recently been rejected in *Wirtz* v. *Teamsters Union Local No. 73,* 53 L.C. ¶ 11;288 (N.D. Ohio, E.D., May 11, 1966). The court's opinion refers to two unreported decisions to the same effect, one of which is a decision by Judge Anderson in the District Court in *Wirtz* v. *Local 191, International Brotherhood of Teamsters,* Civ. No. 9776 (D. Conn. 1964), denying a motion by union officers for leave to intervene in an action brought by the Secretary under this statute.

The subject is thoroughly treated in *Wirtz* v. *Teamsters Union Local No. 73, supra,* and I see no need to repeat here what was said there. The court's conclusion seems to me to be correct. No case to the contrary has been found. I will follow the *Local No. 73* decision. Defendant's motion to dismiss for failure to join indispensable parties is therefore denied.

Defendant's alternative motion raises a different question. The paragraphs of the complaint which defendant seeks to strike relate to alleged violations of law about which apparently no union member complained, either to the union or to the Secretary. The moving affidavit establishes, without contradiction from plaintiff, that the sole ground upon which any union member protested to the union about the election related to Article IV, Section 7A(2) of the union's bylaws, which provides that to be eligible for nomination as an officer, a candidate must be either a present or former member of the Executive Board or the Assembly, or a former member of the Shop Delegates' Council, now defunct. The protesting members considered this bylaw too restrictive. Concededly

they exhausted their remedies within the union, without success, as far as this objection was concerned. Although the complaint in the present action does not specify the objection contained in the complaint of the union members to the Secretary, plaintiff does not contend that it was anything other than this same objection to the bylaw provision. In his complaint in this action, however, the Secretary attacks the election, not only upon this ground, but also upon additional grounds which apparently occurred to him in the course of his investigation of the union members' complaint, i.e., that the union failed to give adequate and timely notice of the composition of its election districts, that the members' right to support and vote for the candidate of their choice was "subject to improper interference" and that certain offices of the union have been filled "in a manner other than by election." This last allegation, it would seem, does not even relate to the election of May 19, 1965 which the Secretary seeks to overturn. Rather, it appears to be a complaint that there was no election at all, as far as certain offices are concerned.

29 U.S.C. § 482(a) provides that:

> "(a) A member of a labor organization—
> "(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body * * *
>
> may file a complaint with the Secretary * * * alleging the violation of any provision of section 481 of this title * * *."

Subsection (b) provides:

> "The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall * * * bring

> a civil action * * * to set aside the invalid election * * * ."

Pertinent legislative history of this statute is reviewed in *Wirtz* v. *Local Union No. 125, International Hod Carriers', etc.,* 231 F. Supp. 590 (N.D. Ohio, E.D. 1964). It indicates that in enacting this section, Congress had in mind the desirability of preserving independent self-government of the union as far as was compatible with the public interest in free and democratic union elections. It intended that the union should have an opportunity to regulate its own affairs before the Secretary could ask a court to regulate its affairs for it. As the court said in *Wirtz* v. *Local Union 169, International Hod Carriers', etc.,* 246 F. Supp. 741, 752 (D. Nev. 1965):

> "The act should be construed to mean that the Secretary has, on complaint of a union member, the right to investigate all aspects of the contested election and to base a complaint to the Court on every issue which the defendant union had a fair opportunity to consider and resolve in connection with any member's appeal to the General Executive Board of the union."

No doubt it would be unreasonable, as the court in *Wirtz* v. *Local 169, supra,* also recognized, to insist that the Secretary's action should be limited to the particular ground asserted by the particular union member who complained to him. That member might be too inarticulate to express the complaints of his fellows. He might not even know of all of them. But it is not too strict to limit the Secretary's attack upon an election to those grounds about which some member, not necessarily the one who eventually complained

to the Secretary, has previously complained to the union. If the Secretary is free to attack an election because of matters never brought to the attention of the union, and which the union never had an opportunity to correct, as the Secretary seeks to do here, the congressional intent clearly manifest in this statute is frustrated.

The cases so hold.

Wirtz v. *Local Union 125, supra.*
Wirtz v. *Local Union 169, supra.*
Wirtz v. *Local Unions No. 406, 406–A, 406–B, I.U.O.E.*, 53 L.C. ¶ 11,297 (E.D. La. May 19, 1966).
Wirtz v. *Local Unions, No. 9, 9–A and 9–B, I.U.O.E.*, 51 L.C. ¶ 19,579 (D. Colo. 1965).
See *Wirtz* v. *Local 191, International Brotherhood of Teamsters, etc.*, 321 F. 2d 445, 448 (2d Cir. 1963).

It follows that paragraphs 8(c), 8(d) and 9 have no proper place in this complaint. Defendant's motion to strike them is granted.

So ordered.

EDWARD C. McLEAN,
U.S.D.J.

DATED: JULY 15, 1966

APPENDIX E

United States District Court for the Southern District of New York

66 Civ. 626

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6, DEFENDANT

WYATT, *District Judge:* The principal question here is whether prior service as a Union officer, on a Union Board, or in the Union Assembly, is a "reasonable" qualification, under the Landrum-Griffin Act, for candidacy for office in the defendant Union.

Section 401(e) of the Act (29 U.S.C. § 481(e)), which may also be cited as the Labor-Management Reporting and Disclosure Act of 1959, provides that in any union election required by the Act "every member in good standing shall be eligible to be a candidate and to hold office (subject to * * * reasonable qualifications uniformly imposed)".

This action, tried to the Court without a jury, was brought by the Secretary of Labor to declare void, etc. an election of officers of defendant Union ("the Union" or "Local 6") held on May 19, 1965. The action is authorized by Section 402 of the Act (29 U.S.C. § 482).

The Secretary charges that the Union violated Section 401(e) of the Act in that its by-laws made eligible for nomination as officers only those members who were then members of the Assembly or of the Executive Board or who had served in the past as members of the Assembly or of the Executive Board or of the former Shop Delegates Council. The Secretary contends that this qualification is not "reasonable" under Section 401(e) of the Act.

It is undisputed that the Union is a "labor organization" subject to Section 401 of the Act, in that it is engaged in an industry affecting commerce (Act § 3(i), 29 U.S.C. § 402(i)). It is also undisputed that members of the Union, having invoked available internal union remedies without final decision, etc., properly filed a complaint with the Secretary and that the Secretary investigated, found probable cause to believe that a violation had occurred, etc., and timely brought this action.

The Court has jurisdiction under Section 402 of the Act.

If the Union did violate the Act as charged and if this violation "may have affected the outcome" of the election, the Court must then declare the election void and direct a new election (29 U.S.C. § 482(c)).

The prior office holding qualification of the by-laws is found not to have been "reasonable" and its enforcement in the 1965 election is found to have been a violation of the Act.

It is not found that this violation "may have affected the outcome" of the election.

The 1965 election of officers cannot be declared void, therefore, but the Secretary may properly be given relief in respect of future such elections.

I

A. DESCRIPTION OF THE UNION; ELECTIONS BEFORE THAT IN 1965

The Union began about 1938 with a successful effort to organize workers in the hotels and clubs in New York City; it was in an organizational period until about 1946.

The Union has been at all times affiliated with the Hotel and Restaurant Employees and Bartenders International Union, A.F.L.–C.I.O. (the "Hotel, etc. International"). It is the largest of the locals affiliated with the Hotel, etc. International.

From the early days of the Union to 1951, its "highest legislative body" was the "Shop Delegates Council". This was made up (a) of delegates elected from each department of each hotel and club, (b) of members of "department boards" and (c) of the general officers. In order to be eligible as a candidate for delegate to the Shop Delegates Council, a person must have been employed at the hotel or club for at least six months and must have been a member of the Union for at least one year.

After a crisis in the affairs of the Union, an election of delegates to a convention was held in May 1951 and an election of officers was held in June 1951. There were rival slates in both elections. Voting machines were used, as has been the practice in all later elections of the Union. The candidates for delegates of the United Union Organization, running on Row A (the top row) were elected by a wide margin. The candidates for officers of the Administration Ticket,

running on Row A, were elected by a vote of about 7,300 to about 3,300 for the nearest opposition slate.

It has been the practice in all Local 6 elections that the administration slate is given the Row A position on the voting machines.

New by-laws were adopted at a special convention held in September 1951, and from that time down through the 1965 election in suit, the structure of the Union has been substantially the same.

By force of the 1951 by-laws, the Shop Delegates Council was abolished and the "Assembly" was set up as the "highest legislative body" in its place. The method of electing delegates to the Assembly was changed from that employed for the Shop Delegates Council. Doubtless these changes were to reduce the governing body to a less numerous and thus to a more efficient group.

The Union is organized by departments and by districts.

The departments are made up of members in each separate craft or broad category of work, except that all club employees are in the club department regardless of the work they do. There are five departments of hotel employees: Banquet, Bar, Dining Room, Housekeeping and Kitchen.

The districts for hotel employees are geographical areas determined by the most effective and convenient grouping of hotels for administrative purposes. There are six numbered districts for hotel employees. All club employees are in a single district.

The basic element in the Union is the unit or shop in the hotel or club where the members of a particular

craft work. Each dining room or kitchen, for example, is a separate unit. Each unit elects a "department delegate" who cooperates with officers of the Union in the handling of grievances and other matters affecting members in his unit. The term "department delegate" is simply another name for shop steward. The department delegates in a district, together with the district officers, make up the District Council.

The organizational novelty of Local 6 is that, while each craft has its own unique traditions, interests and problems, Local 6 includes several different crafts and negotiates with employers for them all. By means of by-laws and otherwise, however, care is taken that each craft (department) in Local 6 has proportional representation in the Assembly and in other Union activities. Care is similarly taken that the employees in any one hotel do not acquire a dominant influence.

Each district has a vice-president and from one to four business agents. These are paid and full time officers and are elected by the members in the district (before March 1959 voting had been by departments).

There are four general officers of the Union: President, Secretary-Treasurer, General Organizer, and Recording Secretary. The general officers are paid, full time officers and are elected by all members in all districts.

The delegates to the Assembly are elected by districts but within a district delegates may be elected from "election districts" established by the Assembly (before March 1959 voting had been by departments). In general, one delegate is elected for each 75 members in the district; there are by-law provisions to see

that delegates are elected from the various departments in proportion to department membership and not too many from any one hotel. The Assembly meets at least quarterly and each year must meet for a full day. The general officers, the vice-presidents, and the business agents are automatically members of the Assembly.

There is an Executive Board (which meets monthly) made up of the principal officers and of members elected by the Assembly on the basis of one Executive Board member from each department for each 500 members of that department.

The term of office of officers and members of the Assembly was two years until a revision of the by-laws in March 1959; since March 1959, the term has been three years.

From September 1951 until at least October 15, 1963, the by-laws of the Union required that a candidate for office must have been a member in good standing for two years and in addition "must be a member of either the Assembly or the Executive Board, or else, at some time in the past, have served at least one term on either the Executive Board, the Assembly, or the old Shop Delegates Council".

It is suggested for the Union that at a meeting of the Assembly on October 15, 1963, the quoted by-law provision was amended so as to change the word "term" to the word "year". The evidence is not convincing that such amendment was in fact adopted. The difference between "term" and "year" is not significant for this decision, however, and it will be as-

sumed that before the 1965 election the word "term" had been changed to "year".

While this prior office qualification had to be satisfied by candidates for Union office at an *election,* it was not applicable to *appointed* officers. If an office becomes vacant, a successor can be appointed by the general officers subject to approval by the Executive Board and the Assembly. Moreover, the Assembly may appoint business agents (who are paid officers) additional to those elected. Several members who had never held office in the Union were in fact appointed as business agents.

Candidates for delegate to the Assembly must have been members in good standing in the Union for one year before nomination.

The 1951 by-laws provided that an election of officers should take place in May 1954 and every two years thereafter.

An election of officers, members of the Executive Board and members of Department Committees took place on May 19, 1954. The incumbent administration ran a full slate for 4 general offices, 23 department offices, 59 members of the Executive Board, and 70 members of the Department Committees. There were no opposition nominees for general offices and but 10 opopsition nominees for 9 of the 23 department offices. There were 19 opposition nominees for 16 of the 59 places as members of the Executive Board. There were 11 opposition nominees for 11 of the 70 places as members of Department Committees. The administration slate won all contests by substantial margins except in one department where the margin was smaller. The

vote in the several contests for department offices was as follows:

Administration nominees		*Opposition nominees*
(elected)	1981	136
*	*	*
(elected)	2315	712
*	*	*
(elected)	2276	674
(elected)	2270	691
(elected)	2238	693
(elected)	2216	672
		189
*	*	*
(elected)	4541	53
(elected)	4565	
(elected)	4523	
(elected)	4534	
*	*	*
(elected)	666	567
*	*	*
(elected)	684	522

There was an election of officers, members of the Executive Board, and members of Department Committees, called to be held on May 16, 1956. The administration nominated a full slate for 4 general offices, 23 department offices, 59 members of the Executive Board, and 60 members of the Department Committees. There were no opposition nominees for any offices. In one department, there were 4 opposition nominees for 3 places as members of the Executive Board and 7 opposition nominees for 7 of the 10 places as members of the Department Committee. There was

no voting in 1956 except in the one department where there were some opposition nominees for the Executive Board and the Department Committee. In that department, the full administration slate for the department appeared on the voting machine even though there was no contest for any of the offices. The administration slate won by a substantial margin. The administration nominees in all departments were declared elected.

For some reason not appearing in the record, there was no election of officers in 1958, the end of the two year term. Presumably the incumbent officers continued to act.

At some time before March 1959, the by-laws were amended to provide that there should be an election of officers and members of the Assembly in May 1959 and every third year thereafter, and that the terms of office of the officers and members of Assembly should be three years. It was also provided that voting should be by districts rather than by departments. There were four geographical districts, a club district and two departments treated as districts.

There was an election on May 21, 1959 of officers and of delegates to the Assembly, all for a three year term. The administration nominated a full slate for 4 general officers, 21 district officers, and 405 delegates to the Assembly. There were no opposition nominees for general offices and but 4 opposition nominees for 3 of the 21 district offices. There were 15 opposition nominees for 15 of the 408 places as delegates to the Assembly. The administration won all contests by sub-

stantial margins. The vote in the several contests for district offices was as follows:

Administration nominees		*Opposition nominees*
(elected)	1865	116
(elected)	1862	
*	* * *	* * *
(elected)	778	205
*	* * *	* * *
(elected)	757	209
		47

There was an election on May 23, 1962 of officers and of delegates to the Assembly, all for a three year term. The administration nominated a full slate for 4 general offices, 25 district offices, and 399 delegates to the Assembly. There were no opposition nominees for any of the offices. There were 6 opposition nominees for 6 of the 399 places as delegates to the Assembly. The entire administration slate was elected; the opposition nominees for the Assembly were defeated by wide margins.

The by-laws were further amended on October 15, 1963. As a result, the Union was divided into geographical districts and the Club District; each district was to have its own offices: a vice-president and one or more business agents; no officers were to be elected by any department. It was provided that the next election should be in May 1965.

The membership in the Union since 1951 has remained at about the same number. The exact figures,

with number of votes cast in the elections (including the 1965 election in suit), are as follows:

Election year	Membership	Votes cast
1951	26,630	12,705
1953	25,678	14,618
1959	26,974	11,214
1962	26,340	7,131
1965	27,354	11,254

While the total number of members in the Union is thus a static figure, there seems to be a high turnover of individual members. This is shown by the fact that from August 1, 1963 to July 31, 1965 there were 5,737 new members joining the Union, or an average of about 240 new members each month. Applying this figure to the 36 months between the May 1962 election and the May 1965 election, it would appear that 8,640 new members joined the Union in that period, or roughly a third of the membership. It is indicated that there is a turnover of upwards of 10% of the Union membership each year.

The exact number of Union members who were eligible to run for Union office in May 1965 cannot be determined, principally because there are few records of the old Shop Delegates Council which, as already noted, was abolished in 1951. It was impossible for the Union to apply its eligibility rule with accuracy because there was no way to verify whether a particular candidate had been a member of the Shop Delegates Council. There is some evidence that if an identification card or some similar certificate in respect of the Shop Delegates Council was produced by a candidate, this was accepted to establish eligibility. The Union produced at trial a list of names taken from its records which showed that at least 1,725 members were eligible to run for office in the May 1965 elec-

tion. Of these 1,725 members, 1,182 were eligible because they had been members of the Shop Delegates Council before 1951; the remaining 543 were eligible because they had been members of the Assembly at some time since 1951.

In practice it was not possible to be elected to the Assembly except with the blessing of the Administration Party conferred by selection to run for the Assembly on Row A. This was doubtless in large part because there was never a full slate of opposing candidates for the Assembly. The candidates to run on Row A for the Assembly were selected by the incumbent group of officers and were put in nomination after caucuses of invited members, attended by officers. It was only natural that candidates selected to run on Row A for the Assembly would be supporters of the administration. All candidates on Row A were pledged to support each other. Dissidents could not be elected to the Assembly.

B. THE ELECTION OF MAY 19, 1965

An election was called to be held on May 19, 1965. At this election, there were to be elected from the Union as a whole four general officers and 10 delegates to the Convention of the International. In the 7 districts, there were to be elected a total of 27 district officers (7 vice-presidents and 20 business agents) and 372 delegates to the Assembly.

In anticipation of the 1965 election, an opposition group was organized calling itself the "Membership Party".

The Assembly met on April 6 for nominations for the 4 general offices and for 10 delegates to the International Convention. Nominations were permitted to be made by any member. Two full rival slates were nominated for these 14 positions, one being the ad-

ministration slate (made up principally of those who were already serving as paid officers) and the other that of the opposition Membership Party.

There were meetings on April 13 in each district for nominations for the 27 district offices and for the 372 delegates to the Assembly. A full slate was nominated for the administration to run for the 27 district offices and for the 372 places for delegates to the Assembly. In all districts except the Club District, there were opposition candidates nominated for vice-president; in five districts, there were opposition candidates nominated for business agent, but not for all the business agent positions to be elected. For the 27 district offices to be elected, there were 14 opposition nominees for 16 offices (two of the Membership Party nominees were each nominated for two separate offices). Of the 14 opposition nominees for district office, one was an independent not affiliated with the Membership Party. For the 372 Assembly delegates to be elected, there were 5 opposition nominees, 2 of the Membership Party and 3 running as independents.

Elections in the Union are conducted under rules and regulations established by an "Election and Objections Committee" designated by the Assembly. The Committee also rules on the eligibility of candidates nominated to run for office or for delegate to the Assembly.

The Committee ruled ineligible two of the Membership Party nominees for the four general offices. The nominee for Secretary-Treasurer was ruled ineligible because he had not held prior office. The nominee for Recording Secretary was ruled ineligible because he had not been a member of the Union for the required period of two years.

The Committee ruled ineligible two of the Membership Party nominees for delegate to the International

Convention, apparently because they had not been members of the Hotel, etc. International in continuous good standing during the period since April 18, 1964. Delegates to such Convention must have been members of the Hotel, etc. International for at least two years and of the local union at least sixty days before the Convention. The Convention for which delegates were to be elected by Local 6 on May 19, 1965 was to meet on April 18, 1966.

The Committee ruled ineligible, because they had not held prior office, five Membership Party nominees for vice-president of districts (one was a nominee for vice-president in two districts) and three Membership Party nominees for business agent of districts (one was also a nominee for vice-president). Eight persons were thus ruled ineligible for district office because they had not held prior office.

The Committee ruled ineligible, because they lacked the required period of membership, three Membership Party nominees, one for vice-president and two for business agent.

No nominees for the Assembly, whether of the Membership Party or independent, were ruled ineligible.

There is no suggestion that the Committee incorrectly applied the qualification provisions of the by-laws to the facts as they existed in respect of the opposition nominees.

The 1965 election, in accord with settled practice, was conducted with voting machines. The nominees for the four general offices and for the ten delegates to the International Convention appeared on the machines in all the districts. The full administration slate was on Row A. The two nominees of the Membership Party for general office (President and General Organizer) and its eight nominees for the ten dele-

gates to the International Convention were on Row B, just below Row A.

There were thus two blank spaces on Row B in the four columns for general offices (no Membership Party nominees for Secretary-Treasurer and Recording Secretary) and two blank spaces in the ten columns for delegates to the International Convention. Had the prior office by-law qualification not been in force, there would have been a Membership Party nominee for Secretary-Treasurer on Row B in all districts.

In each district, the nominees for district offices and for the Assembly appeared on the machines in an extension to the right of the rows in which were the nominees for general offices; then in a further extension of the row to the right appeared the nominees for delegates to the International Convention. The full administration slate for the district was on Row A.

According to normal voting machine procedure, it was possible to pull down one lever to vote for all the nominees of a particular slate on one row.

In four districts (1, 3, 5, 6), there were no opposition nominees on the voting machines for the 14 district offices or for the 195 Assembly delegates to be elected in those districts. Had the prior office by-law qualification not been in force, there would have been 6 Membership Party nominees on the voting machines for the 14 district offices to be elected in those districts.

In the Club District, there was one Membership Party nominee on the voting machines for Assembly delegate, there having been 24 delegates to be elected in the election district of that nominee. This Membership Party nominee appeared on Row B). Had the prior office by-law qualification not been in force, the situation in that district would have been the same.

In one district (2), there was one Membership Party nominee for one of the three business agents to be elected. This nominee appeared on Row B. There was also an independent opposition nominee for one of the three business agents to be elected and two independent nominees for two of the 29 Assembly delegates to be elected in their election district. The independent nominees appeared on a third row designated "Independent" and just below Row B. Had the prior office by-law qualification not been in force, there would have been two Membership Party nominees for two of the four district offices to be elected.

In the remaining district (4), there was one Membership Party nominee for one of the three business agents to be elected and one Membership Party nominee for one of 28 Assembly delegates to be elected. These nominees appeared on Row B. There was one independent opposition nominee for one of the 28 Assembly delegates. The independent nominee appeared on a third row designated "Independent" and just below Row B. Had the prior office by-law qualification not been in force, there would have been two Membership Party nominees for 2 of the 4 district offices to be elected (two Membership Party nominees were each nominated for two different offices; it is assumed that they could not have properly run for both, even if eligible for either).

In the May 19, 1965 election, 11,254 members cast votes (not all voted for every position to be filled) out of 27,354 members eligible to vote.

So far as appears from this record, the voting was fairly and honestly conducted and the votes were accurately counted.

The result of the voting was the election of all Row A administration slate candidates.

The vote in the two contests for general offices was as follows:

Administration nominees		*Membership Party nominees*
(elected)	9,314	1,347
(elected)	9,216	1,299

The lowest vote cast for an administration nominee for delegate to the International Convention was 8,615; the highest vote cast for a Membership Party nominee was 1,154.

Two nominees for Union office of the Membership Party who were ruled ineligible because they had not held prior office were ruled eligible to run for delegate to the International Convention and did appear as candidates for delegate on the voting machines in all districts. They received 1,151 and 1,145 votes, respectively; as noted above, the lowest vote for an administration nominee was 8,615.

The vote in the contests for business agents, where three were to be elected in each of two districts, was as follows:

Administration Nominees	Membership Party Nominees	Independent Nominees
(elected) 1,188	333	70
(elected) 1,206		
(elected) 1,184		
(elected) 1,924	262	
(elected) 1,942		
(elected) 1,903		

In the contest for one place as Assembly delegate in the Club District, the lowest vote cast for an administration nominee for Assembly delegate was 571; the vote for the Membership Party nominee was 58.

In District 2, the lowest vote for the 29 administration nominees for Assembly delegate was 568; the

two independent nominees received 40 and 41 votes, respectively.

In District 4, the lowest vote for the 28 administration nominees for Assembly delegate was 540; the Membership Party nominee received 71 votes and the independent nominee 14.

C. EPILOGUE

The officers and members of the Assembly elected on May 19, 1965 have been acting as such since that date and have already served almost two years of their three year term.

It appears that during the pendency of this action and in December 1966, the by-laws of the Union were substantially changed in respect of the prior office qualification. As then amended, the qualification to run for Union office is that the candidate "must have served as a member of either the Assembly or the Executive Board or he must have been a department delegate, or in the alternative, he must have been a member of the Union for five (5) years".

Evidence was introduced for the Secretary to show to what extent other unions in the country required prior office holding to be eligible for union office. This kind of evidence has been admitted and considered in determining whether particular qualifications were "reasonable" under Section 401(e) of the Act. *Wirtz* v. *Local Unions No. 406, etc.*, 254 F. Supp. 962, 965 (E.D. La. 1966); *Wirtz* v. *Local 30, etc.*, 242 F. Supp. 631 (S.D.N.Y. 1965), remanded on other grounds, 366 F. 2d 438 (2d Cir. 1966); *Goldberg* v. *Amarillo General Drivers, etc.*, 214 F. Supp. 74, 77–8 (N.D. Tex. 1963).

There were 72 major national and international unions, that is, unions having more than 40,000 mem-

bers. Of these, only one required prior office holding as a qualification for candidacy for local union office. The Hotel, etc. International, with which Local 6 is affiliated, is not that one and has no such requirement.

There were 23 national and international unions which have between 20,000 and 40,000 members. None of these required prior office holding as a qualification for candidacy for national or international union office. The Secretary argues that this is appropriate for consideration because the membership of Local 6 is about mid-way between 20,000 and 40,000; for Local 6, it is pointed out that Local 6 is not a national union and that the national union with which it is affiliated has a membership of 444,000.

There were 485 local unions affiliated with the Hotel, etc. International. The average number of members of the locals was 899. There were 125 locals having more than 900 members, including, of course, Local 6. Of these 125 locals, 93 (or about 75%) had no requirement of prior office holding as a qualification for candidacy for local union office.

There were 66 local unions of all kinds which had total receipts in 1964 of more than one million dollars; Local 6 in that year had receipts of more than two million dollars. Of these 66 local unions, only seven required prior office holding as a qualification for candidacy for local union office. Local 6 was one of the seven, and the other six were all affiliated with the one national or international union which requires prior office holding as a qualification for candidacy for local union office.

III

The prior office eligibility requirement of Local 6 was not "reasonable" within the meaning of Section 401(e) but was contrary to the basic purposes of the

Act. It has been noted that the requirement dates from at least 1951; the Act did not become effective until 1959.

One of the chief aims of the Act was to secure "free and democratic union elections" just as in elections in the community at large. S. Rep. No. 187, 86th Cong., 1st Sess., 20, also 5–6 (1959). Congress therefore provided specifically and affirmatively that "every member in good standing shall be eligible to be a candidate" and the only relevant exception was for "reasonable qualifications". The burden of showing that a qualification is "reasonable" is a very heavy one.

Any requirement of prior office holding to be eligible for union office would be unreasonable. The only justification for such a requirement is, as here urged for Local 6, that the magnitude and complexity of union problems requires a certain minimum of experience in union affairs. But this is on the premise that the membership at large cannot be trusted properly to evaluate union experience in casting election ballots. The philosophy of a free democratic society, expressed in the Act, does not tolerate such a premise. The philosophy adopted by Congress in the Act is well expressed in a motto used by a newspaper and said to have been inspired by, or translated from Dante (Divine Comedy, Purgatory, canto XXII, lines 67–69): "Give light and the people will find their own way".

The members of a union must have a free choice to give such weight to experience, inexperience, or to other factors as they see fit. Such is the choice when voting for President and Vice-President of the United States. Candidates for these high offices are not required to have any particular prior experience. The voters weigh the prior experience of the candidates, or lack thereof, in making their choice.

The evidence shows that over 90% of large local unions of all kinds have no prior office requirement and that about 75% of the larger locals which are affiliated, like Local 6, with the Hotel, etc. International have no such requirement.

In any event, the particular by-law requirement of Local 6 was not in its context "reasonable".

Accepting the Union figures, the effect in 1965 of the prior office qualification was to make ineligible for office about 93% of the membership. While 1725 members (or about 7% of the total) were eligible, 1182 of this number (or nearly 70% of the eligibles) satisfied the prior office requirement by service on the Shop Delegates Council, a body which was abolished in 1951, fourteen years before the election. A former member of the Shop Delegates Council who had not held office for fourteen years would thus be eligible whereas an active department delegate for ten years would not be eligible.

Since 1951 the only way new members could become eligible for office was to win election to the Assembly. But in this period the only candidates which won such election were those who ran on Row A, the administration ticket. The only way to run on Row A was to be selected by the administration. Thus, dissidents could not become eligible to be opposing candidates for office and effective opposition was thus sharply curtailed.

Finally, the need for prior office experience is not shown. In this connection, it is significant that an officer may be *appointed* who has no prior office experience and who thus does not satisfy the eligibility requirement for election to that office. But once such an officer is appointed, he automatically becomes a member of the Assembly and immediately becomes eligible to run thereafter for any union office. This

enables the incumbent group to qualify members for elective office by a procedure not available to dissidents.

Any requirement of prior office holding to run for union office is bound to favor the incumbents to the prejudice of wholly free and open elections which it was the purpose of Congress to encourage.

IV

It cannot be found that the violation of section 401(e) "may have affected the outcome" of the 1965 election.

Decision of this issue is governed by the teaching of *Wirtz* v. *Local Unions 410, etc.*, 366 F. 2d 438, 442–43 (2d Cir. 1966). It may be possible to read that opinion (at 443) as declaring that whenever there has been an "exclusion of willing candidates from the ballots", this is sufficient without more to compel a finding that the exclusion "may have affected the outcome". In an earlier decision by a District Court, such seems to have been assumed. *Wirtz* v. *Local Unions No. 406, etc.*, 254 F. Supp. 962, 966–67 (E.D. La. 1966). Our Court of Appeals stated in its opinion, however, that the Secretary must show a "reasonable probability" that the election may have been affected and that there is a "meaningful relation" between the violation and the election outcome. It seems, therefore, that a violation by disqualification of candidates does not automatically require a finding that the outcome may have been affected.

Two elections were before our Court of Appeals, each in a different local union. Prior to one election, eleven opposition candidates were disqualified, after this, the election was uncontested, 216 members then voting out of a total of almost 600 members. One of the disqualified candidates is referred to by the Court

of Appeals as a "proven vote-getter" who had won in an earlier election. In the other election, two opposition candidates were disqualified; after this, the election was uncontested, 607 members then voting out of a total of 3,000 members.

By contrast, while the violation in the case at bar caused the disqualification of nine candidates, there was nevertheless a contested election. In this contested election, there was an opposing candidate for the highest union office (President) and an opposing candidate for General Organizer, the second or third most important office in the union. There were eight opposing candidates for Convention Delegate, running in all districts, and three opposing candidates for district offices. Two of the candidates disqualified for general offices (only one of whom was disqualified for lack of prior office experience) were ruled eligible to run, and did run, in all districts for Convention Delegate. The opposing candidates established a campaign headquarters and conducted an apparently vigorous campaign, with distribution of leaflets and weekly caucuses and election forums. There is nothing to show that any disqualified candidate was a "proven vote-getter" because none of those disqualified had ever run for any office or for the Assembly. In the contested election of 1965, there were 11,254 votes cast out of a total membership of 27,354; this is to be compared with the vote in the last uncontested election of 1962 when 7,131 votes were cast out of a total membership of 26,340.

Consideration has been given not merely to the effect of the by-law on those disqualified but to its possible effect in discouraging others from coming forward as opposing candidates. Nonetheless the heavy vote in favor of the administration candidates is convincing that the existence and enforcement of the by-

law could not have affected the outcome of the election.

The evidence satisfies me that the primary reason for the heavy vote in favor of the administration was the lack of any real grievance or issue against the union management. The platform of the opposition Membership Party did not charge any abuses or misconduct or even any inefficiency; there was no attempt to state any specific complaints; there was no dramatic or important issue to rouse the membership against the incumbents. The appeal of the opposition was in substance that it could do the same job better.

The evidence also shows an important further reason for the election outcome. The administration ran candidates for all 372 places as delegates to the Assembly; against them were only 5 opposing candidates and of these only 2 were of the Membership Party. The history of earlier elections shows that when there are only a few candidates opposing a full slate for the Assembly, the opposing candidates are never elected. There is no suggestion that the qualification for Assembly candidacy (one year's membership) was unreasonable. Any substantial rank and file dissatisfaction would have produced many more opposing candidates for the Assembly than the 5 who actually ran. The presence in all districts of a full slate of Assembly delegates, virtually unopposed, was itself so great an advantage to the administration as to insure the outcome. The vote of 372 Row A candidates themselves, with their fellow workers and friends in their respective shops, was a powerful factor and, taken with the ability of members to vote the only full ticket by pulling down one lever of the voting machine, must have been overwhelming.

V

The 1965 election cannot be declared void and a new election directed. However, Local 6 ought not to be left free to enforce in future elections—such as that due to be held in May 1968—a qualification which is not "reasonable". The Secretary ought not be put to the necessity of bringing a second action.

Rather than dismissing the complaint, therefore, it seems only right to enjoin Local 6 from enforcing in future elections any prior office holding qualification.

True, the Act does not expressly authorize such relief; neither does it expressly deny authority to grant it. The legislative history indicates that Congress never considered the situation here presented; thus there is no legislative history relevant to the question of granting the suggested relief.

In the *Local Unions 410, etc.* opinion, our Court of Appeals said (366 F. 2d at 442):

> "And because Title IV does not permit the Secretary to seek either to enjoin future elections, or to declare a given candidacy requirement unlawful absent a valid complaint and an investigation of its application to a specific election, cf. *Calhoon* v. *Harvey, supra*, we conclude that we have no power to afford the Secretary relief and therefore that these cases are moot."

But the situation there was that a new election had *already* taken place when the Court of Appeals spoke; action had already become moot. In the case at bar, the officers still hold office under the 1965 election against which the action was directed. The action here is not moot. Moreover, unlike *Calhoun* v. *Harvey,* 379 U.S. 134 (1964), the Secretary (not individual members) is properly before this Court.

If the 1965 election cannot be declared void under the Act, despite a violation, why should not the Secretary at least be given relief against a similar violation in the future? This would seem entirely consistent with the purposes and objects of the Act. The Secretary in his complaint prays in traditional form for "such other relief as may be appropriate".

Congress by the Act has given jurisdiction to this Court as a court of equity. Such jurisdiction means that the Court can grant whatever relief is appropriate to the purposes and objects of the Act, whether expressly authorized in the Act or not. *United States* v. *Republic Steel Corp.*, 362 U.S. 482, 492 (1960); *Mitchell* v. *DeMario Jewelry, Inc.*, 361 U.S. 288, 290–92 (1960); *Porter* v. *Warner Co.*, 328 U.S. 395, 397–98 (1946). Citing these decisions, a commentator has suggested with reference to the Act:

> "The fact that one type of equitable enforcement remedy may have been expressly provided by Congress in a regulatory statute should not be a bar to a court's utilization of additional equitable remedies which will achieve the legislative purpose." Beaird, Union Officer Election Provisions of the Labor-Management Reporting and Disclosure Act of 1959, 51 Va. L. Rev. 1306, 1338 (1965).

Our Court of Appeals, citing with approval the Beaird article at the pages from which the above quotation is taken, appears to have concluded that appropriate equitable relief may be given in this type of action even if not expressly authorized in the act. *Wirtz* v. *Local Unions 545, etc.*, 366 F. 2d 435, 436 (2d Cir. 1966).

The change made by Local 6 in its by-laws after the action was commenced is not sufficient to comply

with the Act. The qualification by-law in effect at the May 1965 election required prior office holding and two years' membership in good standing. That by-law as later amended now requires prior office holding *or* membership in good standing for *five* years. Thus the amended prior office holding qualification has the effect of discriminating against those who have been members for two years but have not held prior office. In a union with a large turnover and the regular entry of numerous new members, the amended qualification by-law is not "reasonable" under the Act. The Secretary is entitled to an injunction against the enforcement in any future election in Local 6 of any by-law requiring prior office holding as a qualification for office.

The foregoing contains the findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a).

A judgment in accordance with the opinion may be submitted on notice.

Dated: New York, New York, March 20, 1967.

INZER B. WYATT,
United States District Judge.

APPENDIX F

United States District Court for the Southern District of New York

66 Civ. 626

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6, DEFENDANT

JUDGMENT AND PERMANENT INJUNCTION

This action having come for trial on January 16, 17, 18 and 19, 1967, before the Court, Honorable Inzer B. Wyatt, District Judge, presiding, and the issues having been duly tried, and a decision containing findings of fact and conclusions of law having been duly rendered and filed on March 20, 1967, it is

ORDERED, ADJUDGED AND DECREED as follows:

(1) The prior office holding qualification contained in Article IV, Section 7(a)(2) of defendant's By-Laws is not a "reasonable qualification" upon its members' right to nominate candidates for elective office within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, Section 401(e), 29 U.S.C. 481(e), and its enforcement in the election of May 19, 1965 was a violation of the Act.

(2) the aforesaid violation of the Act was not one which "may have affected the outcome" of the 1965 election within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, Section 402(c), 29 U.S.C. 482(c).

(3) The defendant, its officers, agents, servants, employees, and representatives, and all those persons in active concert or participation with them, be, and they hereby are, permanently enjoined and restrained from enforcing in any future election of defendant, any by-law requiring prior office holding as a qualification for office.

(4) The jurisdiction of this Court is retained for the purpose of enforcing or modifying this permanent injunction and for the purpose of granting such additional relief as may hereafter seem appropriate.

Dated: New York, New York, March 29, 1967.

INZER B. WYATT,
United States District Judge.

Judgment entered March 29, 1967.

JOHN J. OLEAR, JR.,
Clerk.

APPENDIX G

STATUTES INVOLVED

The Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519, 29 U.S.C. 401, *et seq.*) provides in pertinent part:

> Sec. 2. [29 U.S.C. 401] (a) The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation; and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-relations.
>
> (b) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor orga-

nizations, employers, labor relations consultants, and their officers and representatives.

(c) The Congress, therefore, further finds and declares that the enactment of this Act is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947, as amended, and the Railway Labor Act, as amended, and have the tendency or necessary effect of burdening or obstructing commerce by (1) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (2) occurring in the current of commerce; (3) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods into or from the channels of commerce, or the prices of such materials or goods in commerce; or (4) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing into or from the channels of commerce.

Sec. 401. [29 U.S.C. 481] (a) Every national or international labor organization, except a federation of national or international labor organizations, shall elect its officers not less often than once every five years either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.

(b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

(c) Every national or international labor organization, except a federation of national or international labor organizations, and every local labor organization, and its officers, shall be under a duty, enforceable at the suit of any

bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members, and whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any other bona fide candidate shall be made by such labor organization and its officers, with equal treatment as to the expense of such distribution. Every bona fide candidate shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment, which list shall be maintained and kept at the principal office of such labor organization by a designated official thereof. Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.

(d) Officers of intermediate bodies, such as general committees, system boards, joint boards, or joint councils, shall be elected not less often than once every four years by secret ballot among the members in good standing or by la-

bor organization officers representative of such members who have been elected by secret ballot.

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title.

(f) When officers are chosen by a convention of delegates elected by secret ballot, the convention shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of this title. The officials desig-

nated in the constitution and bylaws or the secretary, if no other is designated, shall preserve for one year the credentials of the delegates and all minutes and other records of the convention pertaining to the election of officers.

(g) No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this title. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.

(h) If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this title.

(i) The Secretary shall promulgate rules and regulations prescribing minimum standards and procedures for determining the adequacy of the removal procedures to which reference is made in subsection (h).

Sec. 402 [29 U.S.C. 482] (a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies

without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 401, or

(2) that the violation of section 401 may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the

constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 401, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgement in a civil action, but an order directing an election shall not be stayed pending appeal.

Sec. 403. [29 U.S.C. 483] No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive.

Sec. 601. [29 U.S.C. 521] (a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this Act (except title I or amendments made by this Act to other statutes) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may

deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this Act and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

(b) For the purpose of any investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

U. S. GOVERNMENT PRINTING OFFICE: 1967

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IN THE

Supreme Court of the United States

October Term 1967

No. 891

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor,
Petitioner,

against

HOTEL, MOTEL AND CLUB EMPLOYEES UNION,
LOCAL 6,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI, TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

COHN AND GLICKSTEIN,
Attorneys for Respondent.

SIDNEY E. COHN,
JEROME B. LURIE,
LEONARD LEIBOWITZ,
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INDEX

	PAGE
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Statutes Involved	2
Statement	2
Reasons for Denying the Writ	8
Conclusion	13

Citations

CASES:

Wirtz v. *Local Unions 410, 410A, 410B and 410C, International Union of Operating Engineers,* and *Wirtz* v. *Local 30, International Union of Operating Engineers,* 366 F. 2d 438 ..... 8, 10

STATUTES:

Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. 401 *et seq.*:

Sec. 401 (29 U.S.C. 481) 9
Sec. 402(c) (29 U.S.C. 482(c)) 3, 10

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Opinions Below

The opinions and orders below are adequately set forth in the Petition.

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition.

Questions Presented

1. In a union with over 26,000 members (very few of whom have any contact one with the other as they are employed in hundreds of hotels and clubs located throughout metropolitan New York), is it unreasonable for the membership to adopt, through democratic procedures, an eligibility requirement which guarantees that all candidates for principal office will have had at least a minimum of training and experience in union affairs?

2. Did the District Court err in finding that the application of the candidacy qualification objected to by Petitioner did not affect the outcome of the election where all candidates, disqualified or not, campaigned on behalf of their entire slate, and although the membership had an opportunity to vote for the slate, it was defeated by a 7 to 1 margin?

3. Were alleged violations about which no union member complained or exhausted internal union remedies properly excluded from this case?

Statutes Involved

The pertinent provisions of the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter sometimes referred to as the "Act") are set forth in the Petition (App. G).*

Statement

The Petitioner seeks, in this action, to set aside the election of officers held in May of 1965 by Respondent Union on the ground that certain eligibility requirements contained in the Union's By-Laws constituted an unreason-

---

* "App." refers to the various appendices annexed to the Petition herein.

able qualification upon the right to stand for office and that the enforcement of those eligibility requirements in the May 1965 election " . . . may have affected the outcome" of that election within the meaning of Section 402(c) of the Act.

The challenged qualifications had been, to all intents and purposes, in force and effect since 1941. Prior to its recent amendment, and at the time of the election in issue, the eligibility requirement read,

> "a. With respect to membership in the Union. In order to be eligible for nomination as an officer, a candidate must possess the following qualifications: (1) He must be a member of the Union in continuous good standing for a period of two years immediately preceding his nomination; (2) He must be a member of either the Assembly or the Executive Board, or else, at some time in the past, have served at least one year on either the Executive Board, the Assembly, or the old Shop Delegates Council."

(In 1951 the Shop Delegates Council was abolished and replaced by the Assembly, and, as a consequence, membership in that body was added as a basis for eligibility.)

Since 1941 there have been many changes in the By-Laws just as there have been many changes in the Union and the hotel industry in which the members of the Union are employed. At all times the changes in the By-Laws were made in an effort to involve more and more of the membership in the activities of the Union. Throughout the years the Union has grown larger and stronger. (As of June 30, 1966, the combined surplus of assets over liabilities of the Union was $2,380,875.38. In addition, the Union, through its representatives, participates in the maintenance and operation of various Welfare, Pension and Medical Funds which have combined assets in excess of $30,000,000.)

The purpose of the qualification was to assure the members (who might very well, owing to the Union's size and the fact that the membership is employed in many shops

located throughout the city, be voting for individuals they do not know) that all candidates for paid office had demonstrated prior interest in the activities of the Union and had the knowledge of Union affairs which would enable them to run an organization responsible for the livelihood of tens of thousands of people and the well-being of a multi-billion-dollar industry.

That membership in the Assembly (or in the former Shop Delegates Council) helps train the delegates for leadership in the Union and to qualify them for office, cannot be questioned. The Assembly is the highest governing body of the Union and it discusses and passes upon all important Union matters (271a).* The Assembly meets at least quarterly and each year must meet for a full day. The general officers, the vice presidents, and the business agents are automatically members of the Assembly (32a-33a). At these meetings, the delegates discuss and vote upon questions related to contract enforcement, negotiations, labor legislation, elections, departmental problems, by-law amendments, financial reports, committee appointments and reports, organizational drives and reorganization of districts, apprenticeship programs, and officer training schools (124a-131a). Nevertheless, attendance at Assembly meetings is only a small part of the activities of Assembly members. Even more important in gaining experience in Union affairs is their participation in the Wage Negotiating Committee, in connection with which they participate in the most important function of any trade union, *i.e.*, the negotiation of wages, hours and working conditions. So, also, their membership on the various committees of the Union keeps them in touch with all of its vital affairs (*ibid.*).

As a consequence, Assembly members are constantly and continuously involved in the activities of the Union and receive a great deal of experience in important Union matters.

---

* References followed by "a" refer to plaintiff-appellant's appendix in the Court of Appeals.

Under the By-Law setting forth the qualifications for office, at least 1700 members were eligible to run for the thirty-one offices up for election in May of 1965. There was thus a large pool, all of whom were rank and file, non-paid members of the Union, of approximately fifty-five persons eligible to run for each office.

In April of 1965, nominations were held for the various Union offices.

The ultimately successful Administration Party nominated a full slate of eligible candidates.

The Membership Party (the objecting Union members in this case) nominated 20 candidates, some of whom did not have the necessary qualifications to run for office.

Of those nominated, three sought only to run for Delegate to the International Convention, and, as they possessed the necessary qualifications, their nominations were accepted. Of the remaining seventeen, four were found eligible and ran. (Three of those disqualified for Union office were found qualified and ran for the position of Delegate to the International Convention.) Four were disqualified because they did not have the requisite two-year membership in continuous good standing in the Union, a qualification which Petitioner concedes is a reasonable one.

Of the remaining nominees, nine were ruled ineligible because they did not meet the requirements of the By-Laws in that they had not been members of the Assembly, the Executive Board or the Shop Delegates Council (249a). Of these nine, two appeared on the ballot as candidates for International Delegate (249a).

Thus, in all, seven persons nominated by the Membership Party who were ineligible to run for paid office because they did not meet the qualifications the Secretary alleges were unreasonable, did not appear on the ballot (249a, 275a).

There were certain officers for whom the entire membership voted, the remainder being elected by the membership of each District. The Union-wide positions were President, Secretary-Treasurer, General Organizer, Recording Secretary and the ten Delegates to the International Convention (246a, 247a).

As candidates for the four Union-wide General Offices, the nominees of the Membership Party for President and General Organizer were eligible and ran (246a). (The nominee for President was also declared eligible and ran for International Convention Delegate (247a).)

The Membership Party nominees for the positions of Secretary-Treasurer and Recording Secretary (the other two General Offices), although declared ineligible to run for those positions (the former not having met the eligibility requirement in issue and the latter not having two years' continuous good standing in the Union) were, however, each eligible and ran for the position of Delegate to the International Convention (247a).

Thus, all four nominees of the Membership Party for General Office of the Union were on the ballot and all of the members of the Union had an opportunity to vote for them. After a vigorous campaign, they lost by a vote of approximately 7 to 1.

The candidates on the Administration Party slate ran on Row A, the practice in the Union being (as in New York State elections) to place the incumbent party on the first line of the ballot. The candidates of the Membership Party, running on a single slate as requested by them, appeared on the second line of the ballot, or Row B.

Both the Administration Party and the Membership Party campaigned vigorously throughout the Union (210a-211a, 303a-306a). Each campaigned for votes on a slate basis (210a). Literature was distributed on behalf of both parties (303a-306a). The Membership Party held open

meetings three times a week (210a-304a) and distributed leaflets inviting all members of the Union to

> "COME AND MEET YOUR CANDIDATES AT OUR CAMPAIGN HEADQUARTERS, HOTEL WOODSTOCK, 127 West 43rd Street, New York City, every Monday, Tuesday and Wednesday from 3:00 P.M. to 9:00 P.M.." (304a)

In fact, even through some of the original nominees of the Membership Party had been declared ineligible, they stated, at meetings and in widely distributed literature:

> "We urge you though some of our nominees do not appear on the ballot, to vote Row B all the way because we are running all the way". (306a)

On May 19, 1965 the election was held. Voting machines were used. Petitioner admits that no fraud was involved and that the election was conducted in a democratic fashion in full accordance with the By-Laws of the Union (173a-174a).

11,254 members of the Union voted. This figure represents approximately the same percentage of members voting as in previous Union elections including that of 1951, the most hotly contested election in Local 6 history, in which almost three full slates of candidates ran (241a-242a).

The candidates of the Administration Party for General Office and International Convention Delegate received votes ranging from 8,643 to 9,314. The highest vote received by any candidate of the Membership Party running for any of these offices for which the entire membership was eligible to vote was 1,347. As indicated, the Membership Party—the complainants in this case, were, overall, defeated by a 7 to 1 margin.

Reasons for Denying the Petition

1. The decision of the Court below is clearly correct. By providing that unions be permitted to require "reasonable qualifications uniformly imposed" upon the right to stand for office, Congress expressed its intention to interfere as little as possible in internal union affairs (*Wirtz* v. *Local Unions 410, 410A, 410B and 410C, IUOE;* and *Wirtz* v. *Local 30, IUOE*, 366 F. 2d 438, at p. 442 (2nd Circuit, 1966). Congress recognized that not all members of a union would have the background, knowledge or abilities necessary to qualify for a responsible union position.

A qualification is "reasonable" if it is fit and appropriate to the end in view and rationally relevant to a legitimate regulatory purpose. And the test to be applied in each case is not whether the Secretary of Labor, or even the court, believes that the qualifications imposed by the union are the best, or the wisest, or the most practical, or even the *most* reasonable, but only whether the criteria imposed by the Union upon its members, through the will of those same members, are fit and appropriate to the end in view, i.e., whether they constitute a rational method of achieving a reasonable end, and are therefore "reasonable".

As the Court of Appeals stated (App. A, p. 26):

> "It is not the function of the Secretary to determine what prescribed qualifications for office will best serve the purposes of union democracy nor to dictate what policy unions should follow in limiting candidacy for union office. The union's own rules as to eligibility must prevail unless they impose unreasonable qualifications. We are persuaded that in the present case the Secretary has trespassed upon an area of union governance which is left by the statute to the union's decision. We do not believe that a proper reading of the statute in the

light of its history can justify the Secretary's finding that the union has violated Section 401 by adopting the contested eligibility requirements."

The candidacy qualifications involved in this case are uniquely appropriate under the circumstances:

> "Membership in the union's Assembly, which under the union by-law is the principal basis for eligibility for positions of greater responsibility, provides an opportunity for meeting with the officers and with other more experienced members for discussion and consideration of contract negotiations, enforcement of contract clauses, union finances and many other aspects of union administration. Members of the Assembly are also members of district councils and they participate there in the work of the various committees which deal with all aspects of union problems.
>
> We do not believe that it is unreasonable for a union to condition candidacy for offices of greater responsibility upon a year of the kind of experience and training that a union member will acquire in a position such as that of membership in Local 6's Assembly." (Court of Appeals Opinion, App. A, p. 25).

As stated by Petitioner, ". . . No direct conflict among circuits has yet arisen on the legality of the type of qualification herein involved." (Petition, p. 9) Indeed, it is submitted that no such conflict is foreseeable, as the question of whether a qualification is reasonable must be determined by each court upon the basis of the particular facts and circumstances of each case.

Moreover, although not required to do so, Respondent Union, prior to the trial of this case, amended the by-law qualification in issue (236a-240a). It is estimated that under the new provision, approximately 16,000 members are now eligible to run for paid office.

2. The decision of the District Court that the alleged violation of Section 401 of the Act did not affect the out-

come of the election was not only clearly correct but does not involve questions warranting review by this Court. Not only is there no conflict between the various circuits, but, as stated by Judge Dimock in his concurring opinion in the Court of Appeals (App. A, p. 30):

> "I accept Judge Wyatt's excellent opinion and content myself with simply saying so *since the subject does not seem to me to have sufficient precedential value* to warrant repetition of what he has said." (emphasis added)

Under the facts of this case, for the District Court to have found otherwise would have been to completely disregard the plain language of Section 402(c)(2) of the Act and the clear intent of Congress.

> "Congress intentionally created a narrow remedy under Title IV of the LMRDA so that interference with union elections and management would be kept at a minimum." (*Wirtz* v. *Local Unions 410, 410A, 410B and 410C, IUOE,* and *Wirtz* v. *Local 30, IUOE,* 366 F. 2d 438 (1966), at p. 442).

At the trial of this action, Petitioner did not adduce an iota of evidence in support of its contention that the allegedly unreasonable qualification "... may have affected the outcome" of the election. Instead, he relied upon the "bootstrap doctrine", that a violation of Section 401 which results in disqualification of candidates in and of itself meets the requirement imposed by Congress in Section 402(c)(2).

In concluding that Petitioner had not met its burden of proof, the District Court considered *inter alia* the following facts:

> (i) All candidates of the Membership Party for principal office appeared on the Union-wide ballot on that Party's slate and were defeated by a 7 to 1 margin.

(ii) All other candidates of the Membership Party were defeated by a like majority.

(iii) The candidates of the Membership Party ran on a single slate and all candidates (disqualified or not) admittedly campaigned actively for that slate.

As stated by the District Court (App. E, p. 64):

> "The opposing candidates established a campaign headquarters and conducted an apparently vigorous campaign, with distribution of leaflets and weekly caucuses and election forums."

Despite the foregoing, the Membership Party candidates were overwhelmingly defeated and the District Court properly found that Petitioner had not met the burden of proof required of him:

> "Consideration has been given not merely to the effect of the by-law on those disqualified but to its possible effect in discouraging others from coming forward as opposing candidates. Nonetheless the heavy vote in favor of the administration candidates is convincing that the existence and enforcement of the by-law could not have affected the outcome of the election." (App. E, pp. 64-65)

Thus, the Court concluded:

> "The evidence satisfies me that the primary reason for the heavy vote in favor of the administration was the lack of any real grievance or issue against the union management. The platform of the opposition Membership Party did not charge any abuses or misconduct or even any inefficiency; there was no attempt to state any specific complaints; there was no dramatic or important issue to rouse the membership against the incumbents. The appeal of the opposition was in substance that it could do the same job better." (App. E, p. 65)

3. The original complaint filed by the Petitioner in this case contained allegations of violations of the Act other than the one tried by the District Court. The Union moved in the District Court to strike those allegations on the ground that they related to matters about which no Union member had exhausted internal Union remedies or complained to the Petitioner. Said motion was granted by Judge McLean (App. D).

At the trial of this action, the Secretary offered to prove that the Department of Labor had, prior to commencing suit, notified Union officials of the alleged additional violations (115a-120a). The trial Court refused the offer of proof, ruling that since internal Union remedies had not been exhausted, the matter was not properly before him (234a-235a).

Petitioner asserts the theory that once a union member exhausts internal union remedies and files a complaint with him as to *any* matter, he may investigate and bring suit not only upon the matter which was the subject of internal exhaustion and the complaint filed with him, but upon any alleged violation unearthed in the course of his investigation and of which he has informed the union involved.

This interpretation of the statute is not borne out by the legislative history and has been uniformly rejected by the courts.

The legislative history and the language of the statute is so clear, that we content ourselves by making reference to the decision of the courts below and the cases cited therein.

There is no conflict between the circuits with regard to this question and manifestly it does not involve a question of law requiring decision by this Court.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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SUPREME COURT, U. S.
No. 591
MAR 15 1968
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1967

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE SECRETARY OF LABOR

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INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	3
Summary of argument	9
Argument:	
I. Respondent's rule requiring candidates for election to executive office to have had prior service in the union's legislative body is not a "reasonable qualification uniformly imposed"	12
A. Respondent's rule is unreasonable when measured against prevailing concepts of democracy in public and union elections	16
B. Respondent's rule is not used to limit executive office to those experienced in union affairs	18
C. Respondent's rule allows the incumbents to maintain control and to stifle dissent	21
II. Respondent's rule "may have affected the outcome" of the challenged election	24
III. In a suit filed under Section 402 of the Act to set aside a union election, the Secretary may include in his complaint all violations discovered in his investigation and brought to the attention of the union, without regard to whether such violations were included in the protest of the complaining union member to the Secretary	30
Conclusion	35
Appendix	37

293-613—68——1

CITATIONS

Cases: Page

Calhoon v. *Harvey*, 379 U.S. 134 15

Goldberg v. *Amarillo General Drivers, etc., Local Union No. 577*, 214 F. Supp. 74 ..... 15, 17

Wirtz v. *Local 30, International Union of Operating Engineers*, 242 F. Supp. 631, vacated on other grounds, 366 F. 2d 438 ..... 16, 17

Wirtz v. *Local Union No. 125, Laborers' International Union of North America*, No. 58, decided January 15, 1968 ..... 12, 31, 32, 33

Wirtz v. *Local 153, Glass Bottle Blowers Association*, No. 57, this Term decided January 15, 1968 15

Wirtz v. *Local 406, etc., International Union of Operating Engineers*, 254 F. Supp. 962 ..... 17, 28

Wirtz v. *Local Unions 410, etc.*, 366 F. 2d 438 27

Statutes:

Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. 401, *et seq* 2, 24, 25

Section 2(a), 29 U.S.C. 401(a) 37

Section 2(b), 29 U.S.C. 401(b) 13, 37

Section 2(c), 29 U.S.C. 401(c) 38

Section 401(a), 29 U.S.C. 481(a) 38

Section 401(b), 29 U.S.C. 481(b) 38

Section 401(c), 29 U.S.C. 481(c) 38

Section 401(d), 29 U.S.C. 481(d) 39

Section 401(e), 29 U.S.C. 481(e) 2, 7, 10, 14, 40

Section 401(f), 29 U.S.C. 481(f) 40

Section 401(g), 29 U.S.C. 481(g) 40

Section 401(h), 29 U.S.C. 481(h) 40

Section 401(i), 29 U.S.C. 481(i) 40

Section 402, 29 U.S.C. 482 30

Section 402(a), 29 U.S.C. 482(a) 6, 41

Section 402(b), 29 U.S.C. 482(b) 7, 31, 42

Section 402(c), 29 U.S.C. 482(c) 8, 24, 42

Section 402(c)(2), 29 U.S.C. 482(c)(2) 26

Section 402(d), 29 U.S.C. 482(d) 43

Section 403, 29 U.S.C. 483 43

Section 601, 29 U.S.C. 521 43

Miscellaneous:

	Page
105 Cong. Rec. 885	14
105 Cong. Rec. 14273	14
105 Cong. Rec. 15887	25
105 Cong. Rec. 16150	25
105 Cong. Rec. 19765	25
H. Conf. Rep. No. 1147, 86th Cong., 1st Sess	25
H. Rep. No. 741, 86th Cong., 1st Sess	13
Interim Report of the Select Committee on Improper Activities in the Labor Management Field, S. Rep. No. 1417, 85th Cong., 2d Sess	13, 15
Leiserson, *American Trade Union Democracy* (1959)	24
S. Rep. No. 187, 86th Cong., 1st Sess	13, 14, 17, 32
S. 505, 86th Cong., 1st Sess., 105 Cong. Rec. 892	25
S. 1002, 86th Cong., 1st Sess., 105 Cong. Rec. 2067	32
Summers, *Judicial Regulation of Union Elections*, 70 Yale L.J. 1221 (1961)	23
Taft, *The Structure and Government of Labor Unions* (1954)	24

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BRIEF FOR THE SECRETARY OF LABOR

OPINIONS BELOW

The opinion of the court of appeals (A. 314) is reported at 381 F. 2d 500. The opinion of the district court (A. 288) is reported at 265 F. Supp. 510; an earlier opinion of that court striking portions of the complaint (A. 18) is unreported.

JURISDICTION

The decision of the court of appeals (A. 314) was rendered on July 28, 1967. A timely petition for rehearing and suggestion for rehearing *en banc* were denied on September 20, 1967 (A. 329, 330). Final judgment (A. 327–328) was entered on September 22,

1967. The petition for writ of certiorari was filed on December 6, 1967, and granted on January 29, 1968 (A. 331). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a union rule severely restricting the eligibility of members to become candidates for executive office—here a requirement of prior service in the union's legislative body—may be deemed a "reasonable qualification" under Section 401(e) of the Labor-Management Reporting and Disclosure Act of 1959, notwithstanding the unusual character of the rule and the finding that it effectively eliminates dissident candidates.

2. Whether a candidacy qualification "may have affected" the outcome of a union election within the meaning of Section 402(c) of the Act when it resulted in the disqualification of several nominees for union office and rendered approximately 93 percent of the membership ineligible to run for office.

3. Whether, when a union member complains to the Secretary of Labor, the latter may allege in a subsequent court action violations which are disclosed by his investigation of the union election complained of, which were not charged in the union member's protest to the union or complaint to the Secretary, but of which the union had fair notice before suit.

STATUTE INVOLVED

The pertinent provisions of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. 401 *et seq.*, are printed in the Appendix, *infra*, pp. 35-42.

STATEMENT

I

Respondent represents some 27,000 bartenders, maids, and dining-room and kitchen help employed in hotels, motels, and private clubs in New York City (A. 290, 291, 296).[1] The union has seven districts—one covering private clubs and six geographic districts for hotel and motel employees. The latter group is further divided into five craft departments within each geographic district: for housekeeping, kitchen, dining-room, banquet, and bar workers. Within each hotel, motel, and club, there are several shops—such as the dining-room or kitchen—where the members of a particular craft work. (A. 291.)

The government of the union is four-tiered, and is composed of some elected and some appointed officials. At the top are four general officers, elected by the membership: president, secretary-treasurer, general organizer, and recording secretary (A. 292). They, together with seven vice presidents—one elected from each of seven districts—and delegates to the New York Hotel and Motel Trades Council, who are appointed but may also hold elective positions, comprise the second tier—the "Administrative Board." (A. 84, 202, 292.)

The third tier, the Executive Board, besides the membership of the Administrative Board, includes one delegate for each 500 union members, whom the fourth tier—the Assembly—elects from among its own membership. Business agents sit with the Executive Board,

[1] The union also represents telephone operators and elevator operators in private clubs (A. 52).

but may not vote. Thirty-one business agents are elected by the members of the seven districts[2] but the Assembly may appoint as many more as it wishes. (A. 202, 203, 292.)

The Assembly is composed of the members of the Administrative Board, the business agents, and delegates elected from the craft units within each district at the rate of one delegate for each 75 members.[3] A vacancy in any office may be filled by appointment of the general officers, subject to approval by the Executive Board and the Assembly. (A. 203, 204, 293.)

The bylaw here in issue has, since 1951, required that a union member to "'be eligible for nomination as" a general officer, district vice-president, or business agent—the full-time, paid positions—"must be a member of either the Assembly or the Executive Board, or else, at some time in the past, have served at least one term on either the Executive Board, the Assembly or the old Shop Delegates Council," which was the legislative body of the union prior to 1951.[4] The bylaw applies only to candidates for election to office and not to those appointed to office. (A. 290, 293.)

Although the bylaws establish the Assembly as the union's highest governing body (A. 209), in actual practice the body merely approves reports and policies of the officers and the Executive Board; respondent's

[2] Each district elects 1, 3, or 4 agents (A. 227, 229, 231, 232–233, 235, 237, 238).

[3] However, the number that may be elected from any hotel is limited (A. 292).

[4] The bylaw also requires that a candidate have been a member of the union in good standing for two years prior to the election (A. 293), a rule that the Secretary has not challenged in this case.

president could not recall the Assembly's disapproving any action of the Executive Board in recent years (A. 57–58). The Assembly usually meets, with poor attendance, only four times a year, thrice for a few hours, while the fourth meeting lasts one day (A. 208, 243–244).

Between meetings of the Assembly, governing power is exercised by the Executive Board. Between the monthly meetings of the Executive Board, power is exercised by the Administrative Board. (A. 209.)

About 120 of the 400-odd members of the Assembly play an active role in union affairs through service on committees which formulate wage demands and informally consider union problems between the quarterly Assembly meetings (A. 86–87).

Each member of the Assembly belongs to a council in the district he represents. These councils are forums for internal union discussions rather than organs of actual union government or administration (A. 85). Each shop has a steward of its own election who also belongs to the district councils, but does not thereby become eligible to run for union office (A. 291–292, 51–52, 55, 305).

II

Between 1951 and 1965, respondent held five elections. Each was won by the so-called "Administration Party," whose slates were composed largely of incumbents. There was never more than a smattering of opposition, and no opposition candidate was successful (A. 293–296).

dates," 105 Cong. Rec. 885, because otherwise "practical control of elections is left in the hands of autocratic union officials," 105 Cong. Rec. 14273. Section 401(e), 29 U.S.C. 481(e), thus establishes the right of every union member in good standing to be a candidate for any office "subject * * * to reasonable qualifications uniformly imposed."

The Act offers no specific guide for determining what are "reasonable qualifications". However, Congress, in its numerous references to the need for democratic processes, may be assumed to have taken as its model elections generally conducted in the United States. As one of the Committee Reports observes, unions and their members "aspire to live by the same basic principles and values within their group as they hold ideal for the whole community." S. Rep. No. 187, 86th Cong., 1st Sess., pp. 5–6.

Certainly Congress recognized that an essential attribute of democratic election is freedom to choose, and that restrictions on nominations substantially inhibit the potential breadth of choice. This case does not call for a precise measurement of the scope of the choice required. The prior office-holding requirement involved here—unlike a requirement related to age, length of membership in the union, or absence of a criminal record—is bound to disqualify the vast majority of the membership of any union. Nothing in the election processes of any democratic society imposes so drastic a prior restraint on a voter's freedom of choice. Such a curtailment simply cannot be squared

with the clearly expressed premise of Title IV: the need of "assuring democratic processes in labor unions" and achieving a "revitalization of the democratic processes of labor unions." Interim Report of the Select Committee on Improper Activities in the Labor or Management Field, S. Rep. No. 1417, 85th Cong., 2d Sess., p. 452.

The Secretary of Labor, to whose "special knowledge and discretion" the enforcement of Title IV is entrusted, *Wirtz* v. *Local 153, Glass Bottle Blowers Association,* No. 57, this Term, decided January 15, 1968, slip op., p. 10; *Calhoon* v. *Harvey,* 379 U.S. 134, 140, has not, however, gone so far as to contend that any prior office-holding requirement would be unreasonable. It is enough to suggest that such a candidacy qualification must be scrutinized with great care, and that the burden is on the proponents of the rule to justify it.

The Secretary has developed and, until the decision in this case, the courts have generally accepted, several criteria for measuring the legitimate needs of the union against the effect of a candidacy requirement upon the freedom of choice of union members. The first step is to determine whether the union has some realistic need for the requirement. No restriction on freedom of choice can be even arguably "reasonable" unless it is designed to limit candidacy in a manner that clearly and directly achieves some "legitimate needs or necessities of the * * * union", *Goldberg* v. *Amarillo General Drivers, etc., Local*

In the May 1965 election, the Administration Party for the first time in 14 years faced organized opposition. A group that called itself the "Membership Party" nominated candidates for the four general offices, for ten positions of delegate to the international convention of the union, for 13 of the 27 vice-president and business-agent positions, and for five of 372 Assembly spots (A. 298). One of the four nominees for general office—the nominee for secretary-treasurer—and 7 of those for district office were ruled ineligible for failure to satisfy the prior office-holding requirement (A. 299). The Membership Party then ran candidates for only four executive offices—president, general organizer and business agent in two districts—while the administration ran a full slate (A. 298).[5] 11,254—or about 40 percent of the eligible union members—voted in the election. Where administration candidates were opposed, they won by margins of approximately 7 to 1. (A. 301–302.)

III

After the election, members of the Membership Party invoked internal union remedies in protest of the prior office-holding qualification (A. 289). When this course proved unsuccessful, they filed an appropriate complaint with the Secretary of Labor pursuant to Section 402(a) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 482(a). The Secretary, after investigation, brought this action pur-

[5] The other nominees of the Membership Party were disqualified for failure to have been members in good standing for two years prior to the election (A. 299). See note 4, *supra*.

suant to Section 402(b) of the Act, 29 U.S.C. 482(b), asking the district court to set aside the union's May 1965 election and to direct a supervised election. The Secretary alleged that respondent's prior office-holding requirement violated Section 401(e) of the Act, which provides that every member in good standing shall be eligible to be a candidate for and hold office, subject only to "reasonable qualifications uniformly imposed" (A. 4–5).

The Secretary also asserted three other violations of the Act: failure to give adequate and timely notice of the composition of election districts, improper interference with the members' right to vote for and support candidates, and the use of appointment rather than election to fill certain union offices (A. 5). The district court, however, struck the latter allegations on the ground that the Membership Party had not protested such matters in the internal complaint which triggered the proceeding (A. 19–22).

After trial, the district court held that the rule restricting candidacy to prior members of the Assembly was not reasonable. It rejected the union's claim that the complexity of its problems required its officers to have a minimum of experience in union affairs, pointing out that "the premise [is] that the membership at large cannot be trusted properly to evaluate union experience in casting election ballots. The philosophy of a free democratic society, expressed in the Act, does not tolerate such a premise" (A. 305).

The prior office-holding requirement was thought unreasonable, both because it rendered 93 percent of

the membership ineligible and because a former member of the Shop Delegates Council, who may not have held office for 14 years, could qualify as a candidate while a currently serving shop steward could not (A. 305).

The court further found that the effect of the rule was to curtail opposition, because in practice only candidates on the administration ticket could be elected to the Assembly (A. 305–306). Because a member could be appointed to fill a vacancy without satisfying the prior office-holding requirement, the court concluded "once such an officer is appointed, he automatically becomes a member of the Assembly and immediately becomes eligible to run thereafter for any union office. This enables the incumbent group to qualify members for elective office by a procedure not available to dissidents" (A. 306).

The district court refused, however, to order a new election under the supervision of the Secretary, on the ground that it could not find that the prior office-holding requirement "may have affected the outcome" of respondent's 1965 election within the meaning of Section 402(c) of the Act, 29 U.S.C. 482(c) (A. 306). Although application of the requirement caused the disqualification of nine candidates, the court noted that there was, nevertheless, a contested election, with Membership Party candidates running for president and nine other offices (A. 307). Since all ten opposition candidates were defeated by margins of 7 to 1 or better, the court concluded that the presence of the

disqualified nominees on the ballot could not have changed the results (A. 307).

The court of appeals affirmed, but on different grounds. The majority found the prior office-holding requirement lawful, commenting: "It does not seem to us to be surprising that the union should hesitate to permit a cook or a waiter or a dishwasher without any training or experience in the management of union affairs to take on responsibility for the complex and difficult problems of administration of this union" (A. 320). One judge concurred in the result, expressing his agreement with the district court's opinion that the effect of the rule in curtailing opposition established the unreasonableness of the requirement. But he accepted the district court's refusal to find that the outcome of the election might have been affected thereby (A. 323–325).

All three judges agreed that the district court had properly refused to hear the issues tendered by the allegations of additional violations. The ground, however, was that no member of the union had filed with the Secretary a complaint addressed to the additional violations specified in the Secretary's suit, and that the Secretary, whose only function is to act as the "union member's lawyer," may only litigate points so raised by a union member (A. 322).

SUMMARY OF ARGUMENT

I

Among the provisions of Title IV of the Labor-Management Reporting and Disclosure Act—whose

central goal is to guarantee such "free and democratic" processes as are necessary "to insure that the officials who wield [union power] are responsive to the desires of the men and women whom they represent", S. Rep. 187, 86th Cong., 1st Sess., p. 20—is a requirement that every union member in good standing be allowed to run for any office "subject * * * to reasonable qualifications uniformly imposed" (Section 401(e)).

Congress surely intended that union electorates have the same broad potential choice in selecting their leaders as is generally available in the electoral process. It may well be that any prior office-holding requirement is too drastic a prior restraint on a voter's freedom of choice. At all events, however, the challenged requirement is plainly unreasonable when judged by the criteria that the Secretary has developed—and the courts until this case have accepted.

Thus such a restriction is virtually unprecedented among labor unions of comparable size. What is more, the rule does not even serve the function of limiting office to those with pertinent prior experience. For example, the requirement did not control appointments to union office, although appointees hold a significant number of responsible positions. And the record shows that service in the Assembly of itself gives little experience in the management of union affairs. Moreover, such experience as Assembly members gain in union affairs is equally available to shop stewards who are not eligible to run for office.

Further, as the district court found, the effect of the prior office-holding requirement is to allow the incumbent Administration Party to maintain control

of the union, and substantially to restrict eligibility for office in a manner that assures continuation of this control; dissident groups must be formed by a "palace revolt," for they cannot qualify for executive office except by the Administration Party previously having nominated them for the Assembly.

II

Once a violation of Title IV is established, the district court is to direct a new election under the supervision of the Secretary of Labor if the unlawful procedure "may have affected the outcome" of a union election. The phrase "may have affected" was deliberately chosen to relieve the Secretary of the burden of showing that a violation actually did affect the result.

Although there may be violations—such as the failure to count certain ballots—that may be shown with certainty not to have affected the outcome, any requirement such as the present one, with results that cannot be defined or measured with certainty, surely "may have affected" the result. Here, where the rule barred some 93 percent of union members from candidacy and disqualified announced candidates, it is particularly clear that the restriction may have changed the result. The overwhelming defeat of the few qualified opponents to the Administration Party nominees does not prove the contrary: with more

available candidates to choose from, the opposition group could have fielded a more complete slate and waged a more effective campaign. These factors alone should require a new election under the Secretary's supervision.

III

If the Court rejects either of our first two arguments, it becomes necessary to consider whether the courts below were correct in holding that the Secretary may not seek a new, supervised election on the basis of violations discovered through the Secretary's own investigation, but which were not encompassed within the union members' complaint to him.

In light of the broad investigative powers that the Act confers on the Secretary, and the Secretary's role in protecting the public interest, we submit that the ruling below should be reversed insofar as it bars the allegation of violations that respondent "had a fair opportunity to consider and resolve" before the Secretary brought suit. *Wirtz* v. *Local Union No. 125, Laborers' International Union of North America*, No. 58, this Term, decided January 15, 1968.

ARGUMENT

I. RESPONDENT'S RULE REQUIRING CANDIDATES FOR ELECTION TO EXECUTIVE OFFICE TO HAVE HAD PRIOR SERVICE IN THE UNION'S LEGISLATIVE BODY IS NOT A "REASONABLE QUALIFICATION UNIFORMLY IMPOSED"

In recommending passage of Title IV of the Labor Management Reporting and Disclosure Act, the responsible Senate committee concluded that the quasi-

governmental powers of unions should require unions to follow such "free and democratic" processes as are necessary "to insure that the officials who wield [this power] are responsive to the desires of the men and women whom they represent." S. Rep. No. 187, 86th Cong., 1st Sess., at p. 20; see, also, H. Rep. No. 741, 86th Cong., 1st Sess., at p. 16. Because its investigation revealed a general "disregard of the rights of individual employees," 29 U.S.C. 401(b), including "a significant lack of democratic procedures," S. 1417, 85th Cong., 2d Sess., p. 4, Congress drafted Title IV to assure "the maintenance of minimum democratic safeguards," S. Rep. No. 187, *supra,* at p. 7.

That Title covers all aspects of election procedure, and contains provisions designed to guarantee fairness and democracy from beginning to end. Unions must hold international elections at least once every five years and local elections at least every three years. During election campaigns unions must provide candidates with membership lists and equal treatment in mailing campaign literature. A secret ballot is mandatory, and all candidates may have observers at the polls and at the counting of ballots.

This case is concerned with the portion of the statute that deals with the nomination of candidates for office. Because it is the very start of the election process, any substantial deviation from democratic methods of nomination tends to defeat the goal of union government responsive to the will of its members. Congress therefore recognized that there must be a "real opportunity to nominate opposing candi-

Union No. 577, 214 F. Supp. 74, 80 (N.D. Tex.), "which cannot be otherwise satisfied without resort to this procedure," *Wirtz* v. *Local 30, International Union of Operating Engineers,* 242 F. Supp, 631, 634 (S.D.N.Y.), vacated on other grounds, 366 F. 2d 438 (C.A. 2).

The legitimacy of the need asserted and the narrowness of the means used to achieve it must of course be subjected to several measures: How does the union's approach compare with the general conduct of public elections in the United States? And how does it compare to the usages of other unions? May the restriction on candidacy reasonably be expected to achieve the need asserted in justification?

But even a demonstration of need, sought through as narrow as possible a restriction, should not be enough to pass muster. For a restriction cannot be "reasonable" if it may be expected to restrain nominations to such an extent as to facilitate the in-group's attempt to suppress and avoid competition at the polls. We suggest that respondent's prior office-holding requirement fails on all these counts.

A. RESPONDENT'S RULE IS UNREASONABLE WHEN MEASURED AGAINST PREVAILING CONCEPTS OF DEMOCRACY IN PUBLIC AND UNION ELECTIONS

Respondent's asserted need for a prior office-holding rule was to limit candidacy to members experienced in union affairs. It is no doubt desirable for union affairs to be managed by those who are experienced and knowledgeable. Perhaps the Second Circuit majority was correct in its assertion that "[i]t does not seem to us to be surprising that the union

should hesitate to permit a cook or a waiter or a dishwasher without any training or experience in the management of union affairs to take on responsibility for the complex and difficult problems of administration of this union" (A. 320). But the essence of democracy is in the procedures used to accomplish its aims. Every society and every free electorate seeks an administration of competency, in which experience is an essential ingredient. But it has not been the scheme of democracy in this country to assure competence by requiring prior public service on the part of candidates. The idea has instead been to place trust in the common sense and judgment of an informed electorate.

Congress plainly intended that the same factor govern in the conduct of union elections. Thus the Senate Committee said, "Given the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully competent to regulate union affairs." See S. Rep. No. 187, *supra*, p. 7.

This view is reinforced by the criteria other unions have established. The record in this case includes an exhaustive study of the relevant practices of the labor "community." See *Goldberg* v. *Amarillo General Drivers, etc., Local Union No. 577, supra; Wirtz* v. *Local 30, International Union of Operating Engineers, supra; Wirtz* v. *Local 406, International Union of Operating Engineers,* 254 F. Supp. 962 (E.D. La.). The evidence showed that only one of 72 national and international unions whose membership exceeds 40,000 imposes any such prior office-holding require-

ment upon candidates for local union office (A. 162–163, 268–269). And that one exception—the International Lady Garment Workers Union—provides the alternative of a union-offered course of study in union management (A. 163, 269).

The evidence further showed that of 23 unions having membership between 20,000 and 40,000, not one imposed such a requirement, even upon candidates for national office (A. 157–158, 258–259). And the result is not essentially different, if the unions are analyzed according to their financial receipts rather than the number of their members—of the 66 local unions reporting receipts of over $1,000,000 in 1964, only 7 had a prior office-holding qualification, and the 6 in addition to respondent were members of the ILGWU (A. 160, 161–162, 260–265). Respondent's prior office-holding requirement is not even the norm within its own trade. Only 32 of the 125 largest locals—those with over 900 members—affiliated with the same international have any such requirement (A. 153–155, 250–257).

B. RESPONDENT'S RULE IS NOT USED TO LIMIT EXECUTIVE OFFICE TO THOSE EXPERIENCED IN UNION AFFAIRS

Even if it were conceded that the general tests established in a union's bylaws, rather than the judgment of the members themselves, should determine who is sufficiently experienced to hold union office, respondent's prior office-holding qualification does not serve such a purpose. The bylaw requires prior service in either the Assembly or the old Shop Delegates Council. Two-thirds of the persons who were eligible to run for office under this test had attained that

status through service on the old Shop Delegates Council, a body that had not existed since 1951 (A. 297).

Moreover, any member of the union—whether or not he satisfied the prior office-holding requirement—could be appointed to any union office (A. 293). Notably, the delegates to the New York Hotel and Motel Trades Council, who are members of the Administrative Board (A. 84)—the group that exercises union power on a day-to-day basis—are appointed and are not subject to the prior office-holding rule. Thus respondent itself has decided that prior office-holding is not an essential for persons who sit on its second most powerful tier. How then can such a requirement be justified for the others who serve at the same or a lower level?

Moreover, the record strongly suggests that membership in the Assembly, in and of itself, gives little experience in the conduct of union affairs. The group meets only four times a year (A. 204), and in practice routinely approves the reports of the union officers (A. 57–58, 208–209, 244). The union has attempted to enhance the value of such service by claiming that Assembly members serve on committees that meet more often (A. 82–87). But the record shows that less than a third of the 400 members regularly served on such committees (A. 87).

The only groups in which all members of the Assembly participate are councils in each district, which meet for the purpose of questioning union officers and generally discussing union activities; they have no

governing function (A. 55–56, 86). Only here would the average Assembly member gain to a significant extent the "opportunity for meeting with officers and with other more experienced members for discussion and consideration of contract negotiations, enforcement of contract clauses, union finances and many other aspects of union administration" which the Second Circuit majority thought was the saving benefit of Assembly service (A. 320).

The union's shop stewards, however, also participate in these district councils but are not eligible to run for office (A. 51–52, 55). They are extremely active in union affiairs; they are responsible for prosecuting grievances of members, and participate in the distribution of the workload among members in the shop. They attend meetings of their shop, their craft members, and their district (A. 50–51, 52–56, 121–122, 141–143). Such a person gains at least as much experience as the average Assembly member who becomes eligible to run for office. Yet, even though the Membership Party nominee for vice president in the May 1965 election, for example, was a shop steward with such a background, he was disqualified because he had not also been a member of the Assembly (A. 121–122, 124, 125–126).

It is doubtful, then, that respondent's prior office-holding requirement guarantees experience in those who administer its affairs, or is thought necessary for this purpose. But even if the requirement could be so viewed, the failure to apply it in the case of all members of the union's Administrative Board, and

its use to exclude shop stewards from candidacy, demonstrate that is not "uniformly imposed" as the statute requires.

C. RESPONDENT'S RULE ALLOWS THE INCUMBENTS TO MAINTAIN CONTROL AND TO STIFLE DISSENT

It is equally clear that the requirement provides a facile method for the Administration Party to maintain control of the union. There are few restrictions on candidacy that could have a broader exclusionary effect than the one in this case. It rendered ineligible for executive office about 93 percent of respondent's members. Even assuming that an entirely new Assembly were elected every three years, it would take over 20 years for as many as an additional 10 percent of the members to become eligible. In fact, however, eligibility has not expanded even to this extent. Thus the evidence showed that in this union only 543 members had gained eligibility for office during the 14-year period between 1951 and 1965 (A. 305).

Of course, numbers by themselves prove little; the same statistics demonstrate that there are 60 eligibles for every union executive office. But the realities are that opposition in a union inevitably finds that many members do not support it, and many members who do support it would not wish to run for office as opposition candidates. This is particularly so here, since all who are eligible to oppose have qualified through their association with the Administration Party.

Moreover, many who might wish to run for office on the opposition ticket may simply be unsuitable candi-

dates because of age, health, personality, or a variety of other reasons. Thus, among the pool of theoretically qualified candidates, only a small number are likely to be available to an opposition party, even where there is a broad restriction on candidacy. This small number may well shrink to a practical nullity when the pool of theoretically available candidates has already been shrunk by a restrictive candidacy qualification to less than 7 percent of the union membership.

In this case these are not mere potentialities. The district court found, and the court of appeals did not dispute, that:

> In practice it was not possible to be elected to the Assembly except with the blessing of the Administration Party conferred by selection to run for the Assembly on Row A. This was doubtless in large part because there was never a full slate of opposing candidates for the Assembly. The candidates to run on Row A for the Assembly were selected by the incumbent group of officers and were put in nomination after caucuses of invited members, attended by officers. It was only natural that candidates selected to run on Row A for the Assembly would be supporters of the administration. All candidates on Row A were pledged to support each other. Dissidents could not be elected to the Assembly. (A. 297.)

Thus a dissident group did not even have the opportunity of attempting to capture the Administra-

tion Party nominations, since they would be excluded from the Administration Party caucus (A. 122–123). In effect, the union's rule resulted in a situation that could be changed only by a "palace revolt." [6]

The court of appeals apparently assumed that a dissident group with wide support in the union could attain power in two stages—first by electing candidates to the Assembly, and then by running these candidates for union office at the next election. The imposition of such a procedure is surely inconsistent with prevailing concepts of fair and democratic procedure. Would it be considered consistent with those concepts if, for example, a State imposed on would-be gubernatorial candidates the condition of having belonged to the State legislature at some time, however distant, in the past? Or, what is the more accurate analogy, if a new party could not run a candidate for governor or other State executive post unless it had controlled the State legislature for the prior three years?

Moreover, the effect of respondent's prior office-holding rules, in combination with the union's rule requiring one year of membership in good standing for Assembly candidacy (A. 210), means that a new member must wait at least four years to run for principal office in the union, and this period can reach almost

[6] See Summers, *Judicial Regulation of Union Elections*, 70 Yale L.J. 1221, 1225 (1961): "Requiring candidates for top office to have served previously on the executive board seriously handicaps an opposition group in replacing the incumbents unless it can inspire a 'palace revolt'."

seven years if the prospective candidate happens to enter eleven months before a triennial election.[7]

The court of appeals' approach would have a particularly severe effect in stifling dissent. In most unions, there is no organized opposition party which retains its identity from election to election; typically, an opposition group will form in response to a specific issue and will organize and exist only during a particular election.[8] Yet, if an opposition group with wide support may obtain power only by first electing its members to the Assembly, and then running these members for union office at the next election, that opposition must either anticipate the issues by at least three years, or must form its slate from former members of the Administration Party.

We submit that no rule with this and the other untoward results we have described here can possibly be a "reasonable qualification uniformly imposed."

II

RESPONDENT'S RULE "MAY HAVE AFFECTED THE OUTCOME" OF THE CHALLENGED ELECTION

The remedies of Title IV come into play whenever a procedure unlawful under Section 401 "may have affected the outcome" of a union election. Section 402

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[7] Because of the high turnover in union membership—about 10 percent annually (A. 297)—another effect is that a substantial percentage of union members can never become eligible for office.

[8] Taft, *The Structure and Government of Labor Unions* (1954) at 35–37, 52; Leiserson, *American Trade Union Democracy* (1959) at 74–75.

(c), 29 U.S.C. 482(c). Congress deliberately chose the phrase "may have affected" to relieve the Secretary of the burden of showing that a violation actually did affect the result. The bill passed by the Senate (S. 1555) contained the "may have affected" language. 105 Cong. Rec. 16150. The bill passed by the House (H.R. 8342), as well as the Kennedy-Ervin bill as originally introduced in the Senate (S. 505, 86th Cong., 1st Sess., 105 Cong. Rec. 892), required a showing that the violation had "affected" the outcome. 105 Cong. Rec. 15887. Faced with a choice between these formulations, the Conference Committee adopted the "may have affected" language. H. Conf. Rep. No. 1147, 86th Cong., 1st Sess., pp. 33–35. Senator Goldwater explained (105 Cong. Rec. 19765):

> The Kennedy-Ervin bill (S. 505), as introduced, authorized the court to declare an election void only if the violation of section 401 actually affected the outcome of the election rather than may have affected such outcome. The difficulty of proving such an actuality would be so great as to render the professed remedy practically worthless. Minority members in committee secured an amendment correcting this glaring defect and the amendment is contained in the conference report.

The purpose, then, was to ensure that once use of an improper election procedure was established, the Secretary would not be burdened with an impractical burden of proof as a prerequisite to a new untainted election. There will no doubt be cases where the proof will show with certainty that the unlawful procedure

could not have affected the outcome—as, for example, when the defect lies only in a refusal to tabulate certain ballots, and the number of uncounted votes is plainly less than the successful candidate's margin of victory. But the more usual circumstance will be like this case—where a procedure unlawful under Section 401 has limited to an unknown extent the number of candidates or voters, or the ability of a candidate to communicate with voters, or the freedom with which voters are allowed to cast ballots. In these instances, the effect of the violation cannot be accurately measured. No one can reasonably predict what the outcome of the election would have been if there had been total compliance with the Act. It might have been the same; it might have been different in whole or in part.

These uncertainties must be what Congress had in mind when it chose the present formulation of Section 402(c)(2). The precise effect of the tainted procedure depends on speculative factors. Congress did not want a suit for relief from an improper union election to fail for want of proof of such imponderables.

Certainly, as a matter of logic alone, the exclusion of a single candidate "may have affected the outcome" of any election. No one can ever know, one way or the other. Therefore, we submit, because respondent's prior office-holding rule resulted in the disqualification of several candidates, it assuredly "may have affected the outcome" of the May 1965 election.

In short, we think the Second Circuit ruled correctly in *Wirtz* v. *Local Unions 410, etc.*, 366 F. 2d 438, 443, that *any* exclusion of willing candidates from the ballot meets the statutory test:

> The proviso was intended to free unions from the disruptive effect of a voided election unless there is a meaningful relation between a violation of the Act and results of a particular election. For example, if the Secretary's investigation revealed that 20 percent of the votes in an election had been tampered with, but that all officers had won by an 8–1 margin, the proviso should prevent upsetting the election. Compare *Wirtz* v. *Local 11, International Hod Carriers, etc.*, 211 F. Supp. 408 (W.D. Pa. 1962). But in the cases at bar, the alleged violations caused the exclusion of willing candidates from the ballots. In such circumstances, there can be no tangible evidence available of the effect of this exclusion on the election; whether the outcome would have been different depends upon whether the suppressed candidates were potent vote-getters, whether more union members would have voted had candidates not been suppressed, and so forth. Since any proof relating to effect on outcome must necessarily be speculative, we do not think Congress meant to place as stringent a burden on the Secretary as the district courts imposed here.

But the Court need not go so far to resolve the present controversy, for the record does not support the district court's conclusion that "the heavy vote in favor of the administration candidates is convincing that the existence and enforcement of the by-laws

could not have affected the outcome of the election" (265 F. Supp. at 521).

In the first place, the bylaw rendered ineligible to run for office over 93% of the union's membership. There is simply no way of knowing whether other candidates from the 93% who were excluded might have come forward and won a union office, but certainly this could well have occurred. As the district court in *Wirtz* v. *Local Unions 406, etc., International Union of Operating Engineers,* 254 F. Supp. 962, 966–967 (E.D. La.) stated:

> Where restrictions on candidacy reasonably deprive the substantial majority of the membership of the right to be candidates for union office, there is little question that they "may have affected the outcome" of the election. The word "may" indicates the necessity only for the showing of a reasonable possibility that the violation would affect the outcome.

This is all the more so here, where the record shows the effect of the bylaw was to suppress dissent within the union. It is true, as the district court noted, that only five opposition candidates, including only two from the Membership Party, contended for the 372 seats in the Assembly, and that the lack of a full slate made votes for the opposition less likely. But the absence of a contested election for most offices was itself a reflection of a climate in which opposition was discouraged—a climate evidenced by the prior office-holding rule.

In addition, the exclusion of 9 Membership Party candidates from the ballot surely tended to lessen the

effectiveness of the opposition. The district court asserted that there was nevertheless a contested election at which the Membership Party ran candidates who met with crushing defeat, and the presence of the disqualified nominees on the ballot would not have changed the result, since there was no "dramatic or important issue to rouse the membership against the incumbents" (A. 308). Such speculation involved the court in assessing the strength of the issues on which the opposition party was running, and assessing the political attractiveness of the candidates who were excluded from the ballot. Such hindsight assessments are difficult enough when made in connection with national political campaigns; it is certainly much more difficult for a judge without day-to-day familiarity with the affairs of a union to make this sort of judgment for a union political campaign.

Moreover, additional candidates, simply by their numbers, would have increased the ability of the opposition to communicate its platform[9] and its overall views to the members. And no court can ignore the possibility that some excluded candidate could have raised issues in addition to those that in fact were debated.

We conclude that the district court was unwarranted in speculating that the challenged rule did not affect the outcome of the union election. In our view, the court went beyond its proper role in attempting to weigh probabilities. On this record, it

[9] The Membership Party put forth a platform containing 16 points (A. 278–279).

is plain that the prior office-holding requirement "may" have changed the result. The statute requires no more.

III

IN A SUIT FILED UNDER SECTION 402 OF THE ACT TO SET ASIDE A UNION ELECTION, THE SECRETARY MAY INCLUDE IN HIS COMPLAINT ALL VIOLATIONS DISCOVERED IN HIS INVESTIGATION AND BROUGHT TO THE ATTENTION OF THE UNION, WITHOUT REGARD TO WHETHER SUCH VIOLATIONS WERE INCLUDED IN THE PROTEST OF THE COMPLAINING UNION MEMBER TO THE SECRETARY

The Secretary's complaint included three matters that he had discovered in his investigation before filing suit but which the union members had not protested internally or to him. These alleged violations of the Act were:

(1) the failure to give timely notice of the geographic boundaries of Assembly districts;

(2) improper interference with the right to support and vote for candidates; and

(3) the appointment, rather than election, of certain executive officers.

Because they were new charges, initiated by the Secretary of Labor, the courts below held they could not be considered.

Our challenge to that ruling need not be reached if the Court agrees with our contention that respondent's prior office-holding requirement is an unlawful rule that may have affected the outcome of the 1965 election. In that event, a supervised election will be directed, at which the Secretary will be able to guard against any repetition of the first two violations. And

the issue with respect to appointment of officers is eliminated for the future, we are advised, by a change in respondent's bylaws. On the other hand, should the Court reject either of our arguments on the prior office-holding requirement, it would become necessary to decide whether these additional charges should have been considered below.

In *Wirtz* v. *Local Union No. 125, Laborers' International Union of North America, supra,* this Court held that the Secretary is entitled to include in a Title IV complaint any matter as to which the union had "fair notice" through the union member's internal complaint preceding the suit. However, the Court refrained from deciding whether the Secretary could challenge a violation discovered in his investigation but not raised in the member's complaint. We contend that the rationale of the decision in the *Local 125* case requires the same result here, at least to the extent that the Secretary can prove that the union had the same opportunities for self-correction that would have followed from an internal union proceeding.

The language of the statute does not require that the Secretary's suit challenge only the particular violation specified in the union member's internal complaint; the Secretary is empowered to bring suit if, after investigating the complaint, "he finds probable cause to believe that *a violation of this subchapter* has occurred." 29 U.S.C. 482(b). (Emphasis added.) This general language was not inadvertent. One of the bills considered by Congress provided that when a member complained to the Secretary of a violation of

the Act, the Secretary was to investigate "such allegation," and bring an action only if he found "probable cause to believe that such allegation is true" S. 1002, 86th Cong., 1st Sess., 105 Cong. Rec. 2067. The Conference Committee adopted the broader view, reflected in the Senate Report, that the Secretary was "to investigate the complaint and determine whether there is probable cause to believe that an election was not held in conformity with the requirements of the bill." S. Rep. No. 187, 86th Cong., 1st Sess., p. 21.

Congress, moreover, provided a sixty-day period for the investigation of election complaints and gave the Secretary sweeping investigative powers, powers that would be unnecessary if the Secretary's responsibility were merely to verify the allegations of an individual member's protest. As this Court reasoned in *Wirtz* v. *Local Union No. 125, supra* (Slip op., pp. 5–6):

> First, it is most improbable that Congress deliberately settled exclusive enforcement jurisdiction on the Secretary and granted him broad investigative powers to discharge his responsibilities, yet intended the shape of the enforcement action to be immutably fixed by the artfulness of a layman's complaint which often must be based on incomplete information. The expertise and resources of the Labor Department were surely meant to have a broader play. Second, so to constrict the Secretary would be inconsistent with his vital role, which we emphasize today in *Wirtz* v. *Local 125, etc., ante;* in protecting the public interest bound up

> in Title IV. The Act was not designed merely to protect the right of a union member to run for a particular union office in a particular election. Title IV's special function in furthering the general goals of the LMRDA is to insure free and democratic union elections, the regulations of the union electoral process enacted in the Title having been regarded as necessary protections of the public interest as well as of the rights and interests of union members.
>
> We can only conclude, therefore, that it would be anomalous to limit the reach of the Secretary's cause of action by the specifics of the union member's complaint. * * * [Footnotes omitted.]

These considerations seem fully applicable here. Indeed, so long as the union has "had a fair opportunity to consider and resolve" the matter complained of (*Local Union No. 125, supra,* Slip op., p. 7), what difference can it make whether that occasion was the processing of the union member's protest or another time, prior to suit? No doubt, the labor reform law intends to afford unions an opportunity to put their own house in order before the government or the courts become involved. Accordingly, the Secretary cannot act without receiving some complaint from a member. But once his intervention is properly invoked, there is no reason to suppress additional violations turned up by his investigation. Otherwise there would be a premium upon union suppression of facts,

so that its members cannot learn of violations. It is enough if the union is given notice and a reasonable time to take corrective steps. To the extent that this was done here, we submit the district court committed error when it struck from the Secretary's complaint the three allegations in question.[10]

[10] At trial the Secretary tendered, and the district court rejected, proof that two of the three violations were brought to respondent's attention (A. 78–81, 283–287).

CONCLUSION

The decision of the court of appeals should be reversed, and the case remanded to the district court with directions to order a supervised election under the supervision of the Secretary. Alternatively, if the Court should hold that the prior office-holding rule was not illegal or that there was no showing that it "may have affected" the outcome, the case should be remanded with directions to hold a trial as to the three additional alleged violations.

Respectfully submitted.

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MARCH 1968.

APPENDIX

STATUTES INVOLVED

The Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519, 29 U.S.C. 401, *et seq.*) provides in pertinent part:

> Sec. 2. [29 U.S.C. 401] (a) The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employes' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation; and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-relations.
>
> (b) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor orga-

nizations, employers, labor relations consultants, and their officers and representatives.

(c) The Congress, therefore, further finds and declares that the enactment of this Act is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947, as amended, and the Railway Labor Act, as amended, and have the tendency or necessary effect of burdening or obstructing commerce by (1) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (2) occurring in the current of commerce; (3) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods into or from the channels of commerce, or the prices of such materials or goods in commerce; or (4) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing into or from the channels of commerce.

Sec. 401. [29 U.S.C. 481] (a) Every national or international labor organization, except a federation of national or international labor organizations, shall elect its officers not less often than once every five years either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.

(b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

(c) Every national or international labor organization, except a federation of national or international labor organizations, and every local labor organization, and its officers, shall be under a duty, enforceable at the suit of any

bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members, and whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any other bona fide candidate shall be made by such labor organization and its officers, with equal treatment as to the expense of such distribution. Every bona fide candidate shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment, which list shall be maintained and kept at the principal office of such labor organization by a designated official thereof. Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.

(d) Officers of intermediate bodies, such as general committees, system boards, joint boards, or joint councils, shall be elected not less often than once every four years by secret ballot among the members in good standing or by labor organization officers representative of such

members who have been elected by secret ballot.

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title.

(f) When officers are chosen by a convention of delegates elected by secret ballot, the convention shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of this title. The officials desig-

nated in the constitution and bylaws or the secretary, if no other is designated, shall preserve for one year the credentials of the delegates and all minutes and other records of the convention pertaining to the election of officers.

(g) No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this title. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.

(h) If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this title.

(i) The Secretary shall promulgate rules and regulations prescribing minimum standards and procedures for determining the adequacy of the removal procedures to which reference is made in subsection (h).

Sec. 402 [29 U.S.C. 482] (a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three

calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 401, or

(2) that the violation of section 401 may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor orga-

nization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 401, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgement in a civil action, but an order directing an election shall not be stayed pending appeal.

Sec. 403. [29 U.S.C. 483] No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive.

Sec. 601. [29 U.S.C. 521] (a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this Act (except title I or amendments made by this Act to other statutes) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the

facts required to be shown in any report required by this Act and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

(b) For the purpose of any investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

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UPREME COURT. U. S.

No. 891

APR 16 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1967

W. WILLARD WIRTZ, Secretary of Labor, United States Department of Labor,

Petitioner,

against

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENT'S BRIEF

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INDEX

	PAGE
Opinions Below	1
Jurisdiction	1
Questions Presented	1
Statutes Involved	2
STATEMENT:	
I. The Union and its Structure	3
II. The Previous Service Requirement	7
III. The Election	9
IV. The Proceedings Below	12
Summary of Argument	15
ARGUMENT:	
Forward	21
POINT I—The requirement contained in the Union by-laws that candidates for important and responsible office in the Union must previously have held one of several positions in the Union is a reasonable qualification within the meaning of the Act	23
A. The requirement is designed to achieve a legitimate objective	24
B. The prior service requirement is a reasonable and appropriate means of trying to assure that top Union officers possess a minimum amount of experience and competence	27
C. The prior service requirement does not frustrate the free and democratic Union elections which the Act was designed to assure	33
POINT II—The existence and enforcement of the previous service requirement could not have affected the outcome of the election	41

PAGE

POINT III—The alleged violations about which no member complained to the Union and which the Union had no opportunity to redress prior to the intervention of the Secretary were properly stricken from the Secretary's complaint and excluded from the case 50

Afterword 53

CONCLUSION 56

Citations

CASES:

California v. *St. Pablo and Tulare Railroad Co.*, 149 U.S. 308 54

Commissioner v. *Duberstein*, 363 U.S. 278 49

In Re Hygrade Envelope Corp., 366 F2d 584 49

State v. *Vandersluis*, 43 N.W. 789 23

St. Pierre v. *United States*, 319 U.S. 41 54

United States v. *Alaska Steamship Co.*, 253 U.S. 113 54

United States v. *United States Gypsum Co.*, 333 U.S. 364 49

Wirtz v. *Local Union No. 125, Laborers' International Union of North America*, 389 U.S. 477 20, 21, 52, 54, 55

Wirtz v. *Local 153, Glass Bottle Blowers Association*, 389 U.S. 463 ..... 21, 23, 32, 44, 54

Wirtz v. *Local 153, Glass Bottle Blowers Association*, 372 F.2d 86 23

Wirtz v. *Local 153, Glass Bottle Blowers Association*, 244 F.Supp. 745 23

Wirtz v. *Local 406, etc. International Union of Operating Engineers*, 254 F.Supp 962 46

Wirtz v. *Local Unions 410, etc.*, 366 F2d 438 .... 46, 47

PAGE

STATUTES:

Federal Rules of Civil Procedure:
Rule 52(a) 49

Labor-Management Reporting and Disclosure Act of 1959, 73 Stat, 519, 29 U.S.C. 401, *et seq.*:

Section 2, 29 U.S.C. 401 21
Section 401, 29 U.S.C. 481 ...18, 41, 45, 51, 52, 54, 55
Section 401(e), 29 U.S.C. 481(e) 2, 12, 14, 15 23, 25, 47
Section 401(e), 29 U.S.C. 482(e) 15
Section 402, 29 U.S.C. 482 ...20, 41, 44, 45, 51, 52, 54
Section 402(a), 29 U.S.C. 482(a) 12
Section 402(a)(1)(b), 29 U.S.C. 482(a)(1)(b) 51
Section 402(c), 29 U.S.C. 482(c) 13
Section 402(c)(2), 29 U.S.C. 482 (c)(2) 41

MISCELLANEOUS:

H. Rep. No. 741, 86th Cong., 1st Sess. 33

Jenkins, Howard, Jr. (member, National Labor Relations Board), "Trade Union Elections," in symposium, "Regulating Union Government", edited by Estey, Taft & Wagner 40–41

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"Union Constitutions and the Election of Local Union Officers—an Analysis," published by the United States Department of Labor, Labor-Management Services Administration (1965) ... 31

S. 1555, 86th Cong., 1st Sess. 22

S. Rep. No. 187 on S. 1555, 86th Cong, 1st Sess. 22, 33, 34, 43, 45, 52

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RESPONDENT'S BRIEF

Opinions Below

The opinions below are adequately set forth in the brief for the Secretary of Labor.

Jurisdiction

The jurisdictional requisites are adequately set forth in the brief for the Secretary of Labor.

Questions Presented

1. Where a local union, with over 26,000 members employed by more than 200 employers throughout the New York Metropolitan Area, which has assets of over $2,000,000 and shares responsibility for administering over $30,000,000

of pension, welfare and medical funds, conducts an election under a by-law, adopted through democratic procedures in an effort to assure the competency of top officers, requiring that candidates for such offices have had previous service in union bodies which provide broad experience in union affairs, and where in such election there was a pool of over 1,700 persons eligible to run for such offices (averaging 55 eligibles for each office), did the Court of Appeals err in holding that such by-law requirement is a reasonable qualification upon candidacy for union office within the meaning of Section 401(e) of the Labor Management Reporting and Disclosure Act of 1959?

2. If the first question is answered in the affirmative, should the District Court's holding that "the existence and enforcement of the by-law could not have affected the outcome of the election" be set aside where it was predicated on findings by the District Court that the candidates of the opposition party in the election, who campaigned vigorously for their slate, were defeated by a 7 to 1 margin in a free and fair vote of the membership and that "the primary reason for the heavy vote in favor of the administration was the lack of any real grievance or issue against the union management"?

3. Whether alleged violations of the Act, about which no union member complained or exhausted internal union remedies, which were entirely unrelated to the alleged violations complained of, and which the union had no opportunity to consider or to redress in connection with any member's complaint to it, were properly stricken from the Secretary's complaint and excluded from the case.

Statutes Involved

The pertinent provisions of the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter sometimes called the "Act" or the "LMRDA") are set forth in the appendix to the brief for the Secretary of Labor.

Statement

I

The Union and its Structure

The Respondent, Hotel, Motel and Club Employees Union, Local 6 (hereinafter called the "Union" or "Local 6") was chartered on February 4, 1938. Its jurisdiction covers hotel, motel and club employees working throughout the City of New York, and its more than 26,000 members (A.26, 50) range from the very highly trained to the unskilled (A.51-52). It is the largest single local union in the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO (A.250, 290). Practically every hotel, motel and club of any size in New York City is a signatory to a collective bargaining agreement with the Union (A.167), and its members, by virtue of such agreements, enjoy the highest standard of wages, hours and working conditions of hotel employees anywhere in the United States (A.169-177).

As of June 30, 1966, the surplus of assets over liabilities of Local 6 was $2,380,875.38 (A.320). In addition, the Union, through its representatives, participates in the administration of various welfare, pension and medical funds which have combined assets in excess of $30,000,000 (*ibid.*).

The large membership of Local 6 and the employment of its members in hotels which operate 7 days a week around the clock make it impossible to hold general membership meetings which are representative of the whole (A.92). Because of this fact and because the members are employed in shops scattered throughout the New York Metropolitan Area, the structure of the Union—as established by its By-Laws—is quite complicated, and has been revised from time to time over the years (A.180).

"The basic element in the Union is the unit or shop in the hotel or club where the members of a particular craft work. Each dining room or kitchen, for example, is a

separate unit. Each unit elects a "department delegate" who cooperates with officers of the Union in the handling of grievances and other matters affecting members in his unit . . . " (A.201, 291-292). The department delegates in each hotel comprise a shop committee headed by a shop chairman (A.54-55).

The hotels are grouped together in geographical districts,* each governed by a District Council (A.201, 292). Each District Council is composed of the Vice President of the district, the Business Agents working within the district, the members of the Assembly elected by the members employed in the district, and the Department Delegates elected in the various hotels located in the district (A.201-202). District Council meetings, which are chaired by the Vice President (A.202), deal with district and local shop problems (A.55-56).

The administrative division of the Union into small units or "shops" each of which elects its own delegate has as one of its principal purposes to involve as many Union members as possible actively in the business and affairs of the Union (A.53-56)—something which, in so large a Union, can be achieved only through the use of small basic units. To deal effectively with the broad problems involved in administering contracts and negotiating grievances with large units such as hotels and groups of hotels, it was necessary to organize the delegates elected by the individual shops into hotel-wide shop committees and into District Councils, and to provide them with the expert representation furnished by paid and experienced organizers and negotiators—i.e., the Business Agents and the Vice Presidents (A.55-56). Each of these professionals works as part of the District Council of his district with the Department Delegates elected in the hotels in the district (*ibid.*). This serves the double purpose of bringing the rank and

* The Clubs as a group constitute a distinct district not based on geographical considerations.

file members into the work of the District Councils and of establishing a forum in which the Vice Presidents and the Business Agents can be held to account to the membership they serve (*ibid.*, A.85).

Formerly the highest legislative body of the Union, which acted as the representative of the members in a situation where the holding of membership meetings was not practicable (A.290-291) was the Shop Delegates Council, which consisted of all the "department delegates" elected by each of the individual "units" or "shops" in the hotels throughout the city. However, as the Union grew, the Shop Delegates Council (which grew to some 1400 members) became too large and unwieldy to deal effectively with the Union's affairs (A.291). And so it was abolished in 1951 and the Assembly was established (with one delegate elected for every 75 members), so that the membership—through their duly elected representatives—would be able to pass effectively upon fundamental union policies (*ibid.*).

The Assembly is now the legislative body of the Union (A.209). Its delegates are elected by districts (A.203), but some geographical districts are subdivided into election districts established by the Assembly prior to each election. "In general, one delgate is elected for each 75 members in the district; there are by-law provisions to see that delegates are elected from the various departments in proportion to department membership and not too many from any one hotel.* The Assembly meets at least quarterly and each year must meet for a full day. The general officers, the vice presidents and the business agents are auto-

---

* "The organizational novelty of Local 6 is that, while each craft has its own unique traditions, interests and problems, Local 6 includes several different crafts and negotiates with employers for them all. By means of by-laws and otherwise, however, care is taken that each craft (department) in Local 6 has proportional representation in the Assembly and other Union activities. Care is similarly taken that the employees in any one hotel do not acquire a dominant influence." (A.292)

matically members of the Assembly" (A.292). At these meetings the Assembly delegates discuss and vote upon questions related to contract enforcement and negotiation, labor legislation, elections, departmental problems, By-Law amendments, financial reports, committee appointments and reports, organizational drives and reorganization of districts, apprenticeship programs, and officer training schools (A.82-88).

Assembly members gain wide experience and knowledge of union affairs not only through participation in the meetings of the Assembly itself, but also through the other union activities in which they participate by virtue of their positions as Assembly members. Delegates to the Assembly are automatically members of the District Council. They also participate in the work of the various union-wide committees—e.g., the Department Committees, the Wage Negotiating Committee, the Grievance Committee, the Finance Committee, the By-Laws Committee and many others (*ibid.*). Through service on these committees, Assembly delegates participate in the most important functions of any trade union, i.e., the negotiation of wages, hours and working conditions, the handling of union finances, processing of grievances and the like (*ibid.*).

The Executive Board of the Union consists of the members of the Administrative Board and, in addition, representatives of the various craft departments of the Union elected by the Assembly from among its own members in proportion to the number of members in each department (A.203). The Executive Board, which meets monthly, acts as the general governing body of the Union between meetings of the Assembly (A.209).

The Administrative Board of the Union is composed of the General Officers, the Vice-Presidents and the Delegates to the New York Hotel and Motel Trades Council (A.202). This Board meets weekly and acts as the general governing

body of the Union between meetings of the Executive Board (A.209).

The Union has 4 General Officers: President, Secretary-Treasurer, General Organizer and Recording Secretary (A.200). Only these officers and the delegates to the International Convention of the International Union are elected on a city-wide basis (A.187, 205). The Vice-Presidents and the Business Agents are elected by the members of the various districts on a district-wide basis (A.205).

II

The Previous Service Requirement

The General Officers, the Vice-Presidents and the Business Agents are the Union's paid officers and are the persons principally charged with the day-to-day responsibility of running the business and affairs of the Union, of negotiating and enforcing collective bargaining agreements, of handling grievances, and of conserving the Union's assets.

The By-Laws of the Union have long provided that in order to be eligible to run for the position of General Officer, Vice-President or Business Agent a candidate must have had previous service as a member of another Union body (A.241).

This eligibility requirement was first adopted at the Union's second constitutional convention which was held in 1941 (*ibid.*). At that time the Union's membership had sky-rocketed from 446 in 1938 to more than 15,000, and it was clear to the Convention Delegates that the "town meeting" approach to government was no longer practical or possible. The Convention recognized that the Union required intelligent, and above all, experienced leadership. Accordingly, the right to run for paid office was limited to those persons who had served on the Executive Board or on the then existing Shop Delegates Council (*ibid.*).

In 1951 when the Shop Delegates Council was abolished and was replaced by the Assembly, membership in the Assembly was added as a basis for qualification (A.207, 210, 211).

The By-Law adopted in 1951 and in force at the time of the May, 1965 election reads as follows:

> "Section 7. Eligibility to be a Candidate for and to Hold Office in the Union.
>
> "a. With respect to membership in the Union. In order to be eligible for nomination as an officer, a candidate must possess the following qualifications: (1) He must be a member of the Union in continuous good standing for a period of two years immediately preceding his nomination; (2) He must be a member of either the Assembly or the Executive Board, or else, at some time in the past, have served at least one year on either the Executive Board, the Assembly, or the old Shop Delegates Council. In order to be eligible for nomination as a member of the Executive Board, as a delegate to the Assembly or as a department delegate, a candidate must be a member of the Union in continuous good standing for a period of at least one year immediately preceding his nomination." (A.207) *

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* The District Court and the Secretary refer to the foregoing requirement as a "prior office-holding requirement". This is a misnomer which might well cause confusion by suggesting that office-holding is a closed circle in which the only way to become qualified for office is to have held prior office. The fact is that the only "officers" subject to the qualifications imposed by sub-divisions (1) and (2) quoted above are the *paid officers* of the Union, i.e., the General Officers, the Vice Presidents and the Business Agents. Members of the Assembly and of the Executive Board are not "officers" within the meaning of the section, which explicitly provides that the only qualification for holding such positions is a year's membership in good standing—a qualification which, as Judge Wyatt pointed out (A.308), no one has suggested is unreasonable.

III

The Election

In May of 1965, the Union held a general election. A month before the election, upon due notice, a special meeting of the Assembly was held for the purpose of nominating candidates for the 4 General Offices and 10 delegates to the Convention of the International Union (A.298), who were the candidates to be voted upon by the entire membership. The meeting of the Assembly was open to all members, any member present could nominate and all nominations were accepted (*ibid.*).

Nominations of candidates for Vice Presidents, Business Agents and Assembly Delegates, who were to be elected on a district-wide basis, were made by any member desiring to do so at nomination meetings held on due notice in each district (*ibid.*).

Under the By-Law setting forth the qualifications for paid office, at least 1,700 members were eligible to run for the 31 paid offices up for election (A.297). Of these 1,700 members, not more than some 30-odd were paid Union officers at the time of the election. There were thus approximately 55 persons eligible to run for each office, practically all of whom were rank and file members.

A group within the Union known as the Administration Party (the party to which the present officers of the Union belong and which had been successful in prior elections) nominated a full slate of candidates, all of whom, it is uncontroverted, had the qualifications for office-holding required by the By-Laws (A.299-300).

Another group within the Union, known as the Membership Party, placed in nomination various candidates for paid office and for International Convention Delegate (A.187-188, 212 *et seq.*). When the records of the nominees were checked on behalf of the Election and Objections Com-

mittee, it was found that certain of the nominees of the Membership Party did not have the qualifications required by the By-Laws to run for the offices for which they had been nominated (A.212-217). These nominees were notified to appear before the Election and Objections Committee and upon appearing were questioned as to whether or not they had the required qualifications. It is uncontroverted that each admitted that he did not have the qualifications for nomination required by the Union By-Laws (*ibid.*).

There were at issue in the election altogether 31 paid offices to which the qualification was applicable: the 4 General Offices for which the entire membership voted, and the 27 positions of Vice-President and Business Agent which were voted for by the members of the respective districts (A.188, 207). There were also at issue the positions of 10 Delegates to the International Convention which were voted for by the entire membership at large, but which were not subject to the By-Law qualification (A.188, 212 *et seq.*).

The Membership Party nominated a candidate for each of the 4 General Offices and 13 candidates for the 27 positions of Vice-President and Business Agent. Its candidate for Secretary-Treasurer and 8 of its candidates for Vice-President or Business Agent were found to be disqualified for want of previous service on the Assembly, the Executive Board or the Shop Delegates Council. Its candidate for Recording Secretary and 3 of its candidates for Vice-President or Business Agent were found to be disqualified for want of 2 years' membership in good standing (A.212-217).

Two Membership Party candidates were qualified and ran for General Office and two of its candidates were qualified and ran for Business Agent (A.189). Eight Membership Party candidates, including the two who had been disqualified to run for General Office, ran for Delegate to the International Convention (*ibid.*). Thus, all four nominees of the Membership Party for General Officer appeared on the ballot as candidates for positions voted on by the full membership (A. 225-239).

Both the Administration Party and the Membership Party campaigned vigorously throughout the Union (A.148-149, 277-280). Each campaigned for votes on a slate basis (A.148). Literature was distributed on behalf of both parties (A.277-280). The Membership Party held open meetings three times a week (A.148, 278) and distributed leaflets inviting all members of the Union to

> "Come And Meet Your Candidates At Our Campaign Headquarters, Hotel Woodstock, 127 West 43rd Street, N. Y. C. Every Mon., Tues. and Wed. From 3 p.m. to 9 p.m." (A.278)

The nominees of the Membership Party who had been declared ineligible stated, at meetings and in widely distributed literature

> "We urge you, though some of our names do not appear on the ballot, to vote row B all the way because we are running all the way" (A.280).

The election was held on May 19, 1965. 11,254 members of the Union voted (A.282)—approximately the same percentage of members that voted in previous Union elections, including the election of 1951 which was the most hotly contested in the Union's history and in which almost 3 full slates of candidates ran (A.181, 282).

The candidates on the Administration Party slate ran on Row A, the practice in the Union being (as in New York State elections) to place the incumbent party on the first line of the ballot. The candidates of the Membership Party, running on a single slate as requested by them, appeared on the second line of the ballot, or Row B (A.212-217, 300).

It is undisputed that the Membership Party slate lost by a vote of approximately 7 to 1 (A.225-239).

The Secretary does not claim that there was any fraud involved and concedes that the election was conducted in a democratic fashion in full accordance with the By-Laws

of the Union (A.114-115). The District Court found that "the 1965 election, in accord with settled practice, was conducted with voting machines" (A.299) and that "so far as appears from this record, the voting was fairly and honestly conducted and the votes were accurately counted" (A.301).

Thereafter, certain members of the Membership Party protested the disqualification of some of its candidates to the International General President and to the General Executive Board of the International (A.11-13). Their appeals having been denied, they lodged a complaint with the Secretary of Labor (A.20) and, after investigation, the Secretary commenced this action.

IV

The Proceedings Below

The ground of the Secretary's action with which we are here principally concerned is that the election was in violation of § 401(e) of the Act (29 U.S.C. § 481(e)) because of the enforcement of the prior service requirement of the Union's By-Laws which allegedly imposed unreasonable qualifications on candidacy for office. As required by § 402(a) of the Act (29 U.S.C. § 482(a)), this ground had been the basis of proceedings within the Union invoked by the complaining members.

The Secretary's complaint as originally filed also set forth three other alleged violations as to which, however, no Union member had exhausted or even invoked any remedies within the Union or complained to the Secretary (A.201, 322).

On motion of the Union the allegations of violations as to which no Union member had invoked or exhausted internal union remedies were stricken from the complaint by opinion and order of Judge Edward C. McLean filed July 15, 1966 (A.18-22).

The various issues involved in the remaining violation alleged in the Secretary's complaint, namely, that the prior service requirement constituted an unreasonable qualification on candidacy for office, were thereafter tried before Judge Inzer B. Wyatt. In the course of the trial the Secretary made an offer of proof (A.78-81) regarding the stricken violations, but this offer was rejected by Judge Wyatt (A.165-166).

At the close of the trial, Judge Wyatt found (A.311-312) that:

> (1) The prior service requirement of the Union's By-Laws imposed unreasonable qualifications upon candidacy for office and the enforcement of the same in the election of May 19, 1965 constituted a violation of the Act; but that
>
> (2) "The aforesaid violation of the Act was not one which 'may have affected the outcome' of the 1965 election within the meaning of" § 402(c) of the Act.

Accordingly, Judge Wyatt denied the Secretary's prayer for a new election under his supervision. However, he permanently enjoined the Union "from enforcing in any future election . . . any by-law" imposing qualifications of the kind which he had found violated the Act (A.312).

The Secretary appealed to the Court of Appeals for the Second Circuit, and the Union filed a cross-appeal.

Upon the appeal, the Secretary attacked:

> (1) The refusal of the District Court to set aside the election on the ground that the violation found was not one which "may have affected" its outcome, and
>
> (2) The District Court's rejection of the Secre-

tary's offer of proof as to the additional violations alleged in the stricken paragraphs of the complaint.

The Union challenged:

(1) The District Court's holding that the prior service requirement violated Section 401(e) of the Act, and

(2) The issuance of an injunction against the enforcement of such requirements in future elections.

A majority of the Court of Appeals (per Judge Paul R. Hays) found that the prior service requirement was a reasonable qualification for office holding and did not violate Section 401(e) of the Act (A.321). Accordingly, the majority did not reach the question whether the enforcement of the requirement "may have affected the outcome" of the election (*ibid.*). Judge Dimock concurred on the ground that, although he judged the requirement unreasonable, its enforcement in the election did not affect the outcome thereof (A.323-326). The Court denied the Secretary's appeal from the rejection of his offer of proof of the violations alleged in the stricken paragraphs of the complaint (A.323); and the injunction issued by the District Court was set aside in view of the Court's holding that the requirement did not violate § 401(e) and also on the ground that the District Court was without power to issue such an injunction (A.323).

Petitions by the Secretary to the Court of Appeals for rehearing and for rehearing *in banc* were denied (A.329-330).

Summary of Argument

Foreword

The LMRDA must be construed in the light of the intent of Congress not to interfere in the internal affairs of trade unions beyond the minimum required to achieve the statutory objectives.

I

The Local 6 By-Law requirement that candidates for top union office must previously have served on the Executive Board, the Assembly or the Shop Delegates Council is a reasonable qualification on candidacy for office within the meaning of Section 401(e) of the Act.

(a) The requirement is designed to achieve a legitimate objective.

Local 6 is a complex organization with a large membership and substantial assets, which deals with over 200 employers throughout the New York Metropolitan Area. Its top officers, who are responsible for the conduct of its affairs, are selected by and from a heterogeneous membership of varied crafts and skills employed in shops scattered throughout the city. Section 401(e) of the Act, in providing that candidates for union office may be subject to "reasonable qualifications uniformly imposed", permits requirements designed to assure the competency of candidates for such positions. That such qualifications are not ordinarily imposed on candidates for governmental office does not support the contrary view. The problems and needs of unions differ from those of government, where there are other mechanisms, such as political parties, primary elections and nominating conventions, to screen aspirant from candidate.

(b) The required service on certain union-wide bodies provides broad experience in every facet of the Union's affairs on a union-wide basis and is reasonably calculated to assure competency. Service as a Department Delegate furnishes experience in local Union matters only.

Previous service requirements are found in the Constitution of an International Union of over 400,000 members and in the constitutions and by-laws of a number of local unions. But even if such requirements were not so widespread, they are appropriate in the special circumstances of Local 6.

The *bona fides* of the prior service requirement is not impugned by the fact that it is not applicable where officers are appointed. Where offices are filled by appointment, competency is reasonably assured by the judgment of an experienced Union body that a member is qualified for a particular position. The Constitutions of two International Unions with over 400,000 members each provide for the personal judgment of experienced persons in evaluating the competency of candidates for office. Unless the particular means selected by the Union to assure competency is patently unreasonable, the judgment of neither the Secretary nor the Court should be substituted for that of the Union.

(c) The prior service requirement does not frustrate the free and democratic Union elections which the Act was designed to assure. The purpose of Congress was to assure that union leaders be responsive to the wishes of the membership. The necessary and sufficient condition to assure this is to furnish the constituents with a genuine opportunity to change the administration.

Under the prior service qualification there was a pool of 1700 persons eligible to be candidates for paid office

in the 1965 election, approximately 55 persons for each of the 31 offices to be filled. This was more than an ample number of eligible candidates to enable the Union members to effect a change of administration.

The fact that a substantial number of those qualified to be candidates were at one time associated with the Adminstration Party does not support the inference that it would be difficult for the members to change the administration. Except for the few persons now holding office in the Union, all of the 1700 persons eligible as candidates are rank and file members who have no firm association with the present officers of the Union. Several qualified candidates of the opposition Membership Party in the 1965 election had previously been elected to the Assembly as candidates of the Administration Party. The real reason for the lack of opposition in the 1965 election was the absence of any significant or widespread dissatisfaction with the way the Union was being run.

The prior service requirement does not deprive individual members of a reasonable opportunity to stand for office. Any member in continuous good standing for a year is eligible to run for the Assembly, and if he is elected and serves for a year, he becomes qualified to be a candidate for paid office.

The Secretary's suggestion that the 1965 election was conducted in a "climate in which opposition was discouraged" is without evidence to support it. The Secretary's extensive investigation into the conduct of the election did not produce a single witness to testify to any such "climate"; and there is nothing in the testimony of the two Membership Party members who were witnesses for the Government that even suggests the existence of such a "climate". The evidence is all to the contrary.

11

The previous service requirement, even if found to be unreasonable, did not affect the outcome of the election.

The Act provides that an election may be set aside only if the Court finds "upon a preponderance of the evidence after a trial upon the merits . . . that the violation . . . may have affected the outcome of [the] election . . ."

The 1965 election in Local 6 was hotly contested. The opposition Membership Party ran candidates for the union-wide positions of President and General Organizer; and its candidates for Secretary-Treasurer and Recording Secretary who were disqualified ran for the union-wide position of Delegate to the International Convention. These candidates and a number of others ran together on one slate and on one platform. All of the Membership Party candidates, disqualified as well as qualified, participated in the Party's campaign and urged the members of the Union to vote for its slate of candidates who ran regardless of the disqualification of others.

The Membership Party's candidates lost by margins of approximately 7 to 1.

The District Court found that the prior service requirement could not have affected the outcome of the election.

The Secretary takes the extreme position that an election found to have been in violation of Section 401 must be set aside if there was any *possibility*, no matter how slight, that the alleged violation may have affected the outcome, or, conversely, unless it is shown to have been *impossible* that the alleged violation affected the outcome. Thus the Secretary asserts that "the Court went beyond its proper role in attempting to weigh probabilities." The

effect of the Secretary's position is (a) to nullify the language of the Act providing that the question whether an alleged violation has affected the outcome of an election must be determined "upon a preponderance of the evidence", and (b) to foreclose the courts from exercising the normal judicial function of weighing evidence and to compel them to make a finding on the basis of the barest possibility, regardless of the weight of evidence to the contrary.

In the case at bar, there was overwhelming evidence on the basis of which the Court below, after giving consideration to the "possible effect [of the By-Law] in discouraging others from coming forward as opposing candidates", found that the existence and enforcement of the By-Law could not have affected the outcome of the election. This finding, made after four days of trial, at which both members of the Union's administration and members of the opposition party testified, should not be set aside unless "clearly erroneous."

III

Certain alleged violations set forth in the Secretary's original complaint, which were stricken by the District Court, were properly excluded from the case.

No Union member made any complaint to the Union or exhausted remedies within the Union regarding the stricken violations. The only complaint made to the Union was about the prior service requirement. This did not give the Union any notice of the stricken violations, and the Secretary does not claim that it did. The stricken violations were first called to the Union's attention after the Secretary had made his investigation.

The legislative history of the Act shows that the intent of Congress, in requiring the exhaustion of intra-union

remedies, was to preserve union independence and self-government by affording unions an opportunity to correct improper elections upon members' complaints to the Union and prior to intervention by the Secretary. In *Wirtz* v. *Local Union 125*, 389 U.S. 477 (1968), the Court decided no more than that the Secretary could maintain an action under Section 402 predicated upon an alleged violation of which no specific complaint had been made to the union, where the union had received "fair notice" of such violation from another complaint lodged with it so that it had a fair opportunity to consider and redress such violation before governmental intervention.

As it cannot be claimed here that the Union received such notice or had such opportunity with respect to the alleged violations which were stricken, the Secretary is asking this Court to rule that he may assert in his complaint any matter called to the Union's attention prior to the institution of the Secretary's court action.

The Secretary's position negates the language of Section 402 requiring the exhaustion of internal union remedies. If the independence and integrity of unions can be sufficiently protected by calling alleged violations to the attention of the Union *after* the Secretary has made his investigation and before he has started his action in court, Congress might as well have said nothing about the exhaustion of internal union remedies and provided that proceedings under Section 402 may be instituted by a member's complaint to the Secretary or on the Secretary's own initiative.

Afterword

The prior service requirement which was in force at the time of the 1965 election has been amended to add two additional categories of eligibles, namely, persons who have been Department Delegates and persons who have been members of the Union for five years. Under the

amended provision, there is a pool of more than 16,000 persons qualified as candidates for paid office, providing more than 500 eligibles for each office.

The Union's regular general election to be held on May 16, 1968 will be conducted under this new By-Law provision. That election will render academic the existing controversy before this Court which concerns the validity of the 1965 election under the old By-Law, and the case will be mooted. *Wirtz* v. *Local 153, Glass Bottle Blowers Association,* 389 U.S. 463 (1968), is distinguishable because there the intervening election was held under the same by-law as the original election, so that a holding of mootness would have left the violation unvindicated. *Wirtz* v. *Local 125,* 389 U.S. 477 (1968), is distinguishable because there the gravamen of the complaint was the *conduct* of the election, so that the holding of an unsupervised election gave no assurance that the unlawfulness infecting the challenged election had been eliminated.

In the case at bar there is no charge of misconduct, but only a charge that the 1965 election was conducted under an unlawful by-law. As the new election will be conducted under a by-law appropriately amended, no purpose would be served by ordering a supervised election.

ARGUMENT

Foreword

The LMRDA was enacted as regulatory legislation to eliminate or prevent what Congress found to be improper practices on the part of labor organizations, their officers and others (LMRDA § 2, 29 U.S.C. § 401). However, the Act's legislative history shows that it was not intended to authorize governmental interference in the internal affairs of trade unions beyond the minimum required to achieve the statutory objectives.

"In acting on this bill,* the committee followed three principles:

"1. The committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization. Trade unions have made a commendable effort to correct internal abuses; hence the committee believes that only essential standards should be imposed by legislation. Moreover, in establishing and enforcing statutory standards, great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents.

"2. Given the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully competent to regulate union affairs. The Committee strongly opposes any attempt to prescribe detailed procedures and standards for the conduct of union business. Such paternalistic regulation would weaken rather than strengthen the labor movement; it would cross over into the area of trade union licensing and destroy union independence.

"3. Remedies for the abuses should be direct . . ."

S. Rep. No. 187 on S. 1555, 86th Cong., 1st Sess. p. 7, I Legislative History of the Labor-Management Reporting and Disclosure Act of 1959,** p. 403.

This Court has found that the special function of Title IV of the Act, in which the statutory provisions here in question are contained, is to insure free and democratic elections. It pointed out, however, that

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* S. 1555, 86th Cong., 1st Sess. This bill, after Conference amendments, was enacted into law as the LMRDA. The election title of the Bill (Title III) was enacted as Title IV of the Act virtually as drafted by the Senate.

** Hereinafter referred to as "Leg. Hist."

> "The legislative history shows that Congress weighed how best to legislate against revealed abuses in union elections *without departing needlessly from its long-standing policy against unnecessary governmental intrusion into internal union affairs.*" (Italics supplied).
>
> *Wirtz* v. *Local 153, Glass Bottle Blowers Association*, 389 U.S. 463, 470-471 (1968).

This manifest legislative purpose is directly relevant to each of the issues here presented.

POINT I

The requirement contained in the Union's By-Laws that candidates for important and responsible office in the Union must previously have held one of several positions in the Union is a reasonable qualification within the meaning of the Act.

The Act specifically provides that eligibility to be a candidate for union office may be "subject . . . to reasonable qualifications uniformly imposed." (LMRDA § 401(e), 29 U.S.C. § 481(e)).

The requirement here in question is "reasonable" because:

(A) It is designed to achieve a legitimate objective;

(B) It is reasonably adapted to achieve that objective;* and

(C) It does not defeat the purposes of the Act.

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* The word "reasonable" has been held to mean "fit and appropriate to the end in view" (*State* v. *Vandersluis*, 43 N.W. 789 (Cir.Ct.Minn. 1889)) and "rationally relevant to a legitimate regulatory purpose". (*Wirtz* v. *Local 153, Glass Bottle Blowers Association*, 244 F.Supp. 745, 748 (W.D. Pa. 1965), judgment vacated and remanded 372 F.2d 86 (3d Cir. 1966), reversed and remanded 389 U.S. 463 (1968)).

A.

The requirement is designed to achieve a legitimate objective.

The objective of the prior service requirement is, of course, to provide some degree of assurance that candidates for General Office, Vice-President and Business Agent of the Union have such prior experience and knowledge of Union affairs that they are competent.

The Union is an organization of over 26,000 members who work for over 200 employers scattered throughout the New York Metropolitan Area (A.167, 320). It has collective bargaining agreements with practically every hotel, motel and club in New York City (A.167), and as collective bargaining agent under such agreements it has serious responsibilities not only towards its members but also towards the multi-billion dollar industry in which they work and the public which they serve. The Union has over $2,300,000 of net assets and participates in the management of pension, welfare and medical funds having assets aggregating more than $30,000,000 (A.320).

The General Officers, the Vice-Presidents and the Business Agents are responsible for the conduct of the affairs of the Union and are primarily accountable for its proper functioning, the conservation of its assets, the maintenance of proper wage standards and working conditions for its members, and the preservation of labor peace in the New York Hotel Industry (A.171). These officers must be selected by and from a large and heterogeneous membership employed throughout the New York Metropolitan Area, whose skills run the gamut from chef to potwasher, from chief housekeeper to chambermaid, and who, because of the Union's size, are not likely to have any personal acquaintance with candidates for office (A.92, 180).

On the face of the matter it is not unreasonable to impose a qualification designed to assure that candidates for these positions have at least minimum ability to do their jobs.

The statutory language of § 401(e) of the Act expressly providing that nominees for union office may be subject to "reasonable qualifications uniformly imposed" must obviously have been intended to allow, among others, qualifications designed to assure the competency of candidates. Indeed, the Government concedes this to be a legitimate objective of such qualifications. (Govt's brief, p. 15). This is not surprising because the objective of assuring competency to hold office is the one objective which has as its end the excellence of the electoral process. If union elections may be restricted by any qualifications on candidates whatever (and to say that they may not be would nullify clear statutory language), surely qualifications designed to improve the electoral process should be viewed more indulgently than qualifications which are designed to achieve other union ends unrelated to elections.

The District Court held the prior service requirement invalid on the broad ground, among others, that a qualification for office holding designed to assure "a certain minimum of experience in union affairs" is contrary to "the philosophy of a free democratic society" (A.304-305). Along the same line the Secretary argues (Brief, p. 17) that "the idea [of democracy in this country] has . . . been to place trust in the common sense and judgment of an informed electorate" and that "Congress plainly intended that the same factor govern in the conduct of union elections."

These are facile generalizations utterly without support in the language of the statute or its legislative history,*

* The sentence from the Senate Report quoted by the Secretary (Brief, p. 17) in support of his statement is taken out of context from a paragraph of the Report quoted in full at Page 22 of this brief. The thrust of that paragraph is not that the power of union members to regulate union affairs should be unrestricted by democratically adopted union by-laws, but that such power should not be interfered with by the Government.

which overlook the obvious fact that unions differ from Government in their history, structure, purpose and a host of other ways. But even if the analogy of unions to Government were sound, it would not support any sweeping condemnation of qualifications for office holding which seek to assure competence of officials.

Only the most naive are unaware that through our system of political parties, primaries, nominating conventions, etc., the candidates who finally appear on the ballot are subjected to an elaborate sifting process * which, in theory, and to some extent in practice, results in the selection of candidates reasonably competent to hold office. Surely where, as in Local 6, any member in good standing can place in nomination the name of any other member (A.298), it is not contrary to our basic political philosophy to impose qualifications on nominees designed to require a certain minimum of experience in union affairs.

As the majority of the Court below held in the case at bar:

> "... we hold that it is not self-evident that basic minimum principles of union democracy require that every union entrust the administration of its affairs to untrained and inexperienced rank and file members. Local 6 has over 26,000 members. .... It does not seem to us to be surprising that the union should hesitate to permit a cook or a waiter or a dishwasher without any training or experience in the management of union affairs to take on responsibility for the complex and difficult problems of administration of this union." (A.320).

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* See, for example, Merriam and Foote, "The American Party System", The Macmillan Company, 1950, esp. p. 361.

B.

The prior service requirement is a reasonable and appropriate means of trying to assure that top union officers possess a minimum amount of experience and competence.

The Secretary concedes that not every "prior office-holding requirement would be unreasonable" (Secretary's Brief, p. 15).

The requirement here in question is that to be eligible for nomination as a paid officer of the Union a candidate must have served on the Executive Board, the Assembly or the old Shop Delegates Council.* Such service would provide a union member with substantial opportunity for obtaining experience and understanding of Union affairs (A.82-88).

Assembly Members (and likewise, in the past, members of the Shop Delegates Council) debate and vote upon the financial expenditures of the Union, collective bargaining negotiations, craft problems and other vital Union matters. They are automatically members of their respective District Councils and as such participate in the work of the District Councils, in particular the handling of grievances on the shop level. They are also members of the various union-wide committees such as the Department Committees, the Wage Policy Committee, the Grievance Committee, the Finance Committee, and the By-Laws Committee, and participate in the work of those Committees in the formulation and execution of fundamental union policies and programs (*ibid.*).

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* Candidates for paid union office are also required to have been members of the Union in continuous good standing for two years prior to nomination (A.207); but this qualification has not been challenged.

The Secretary's assertion that "less than a third" of the Assembly members served on such committees (see Secretary's Brief, p. 19) is incorrect. The record reference cited by the Secretary simply establishes that there were 110 or 120 Assembly members on the Wage Policy Committee. But this is only one of the many committees on which Assembly members serve. Accordingly, the Secretary's claim that only a third of the Assembly members serve on union-wide committees is without support in the record (see to the contrary A.82-87).

Thus the majority of the Court of Appeals found in the case at bar:

> "Membership in the union's Assembly, which under the union's by-law is the principal basis for eligibility for positions of greater responsibility, provides an opportunity for meeting with the officers and with other more experienced members for discussion and consideration of contract negotiations, enforcement of contract clauses, union finances and many other aspects of union administration. Members of the Assembly are also members of district councils and they participate there in the work of the various committees which deal with all aspects of union problems.
>
> "We do not believe that it is unreasonable for a union to condition candidacy for offices of greater responsibility upon a year of the kind of experience and training that a union member will acquire in a position such as that of membership in Local 6's Assembly." (A.320)

The Secretary attacks the prior service requirement by arguing (1) that similar qualifications are seldom found in other unions; (2) that it is arbitrary not to include service as a Department Delegate * as an alternative basis

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* Whom the Secretary calls "Shop stewards" (Secretary's Brief, p. 20).

for qualification, and (3) that the *bona fides* of the previous service requirement is impugned by the fact that it does not apply to positions filled by appointment.

(1)

The evidence introduced by the Secretary on his first argument lends support to the Union's position. It shows that:

1. The International Ladies Garment Workers Union (with over 440,000 members) requires either prior experience in a union position or the completion of a training course as a requirement for candidacy for local union office (Exhibit 72, A.266);

2. Thirty-two of the one hundred and twenty-five largest local unions affiliated with the Hotel and Restaurant International (the parent International of Local 6), having one-third of the entire membership of those local unions, have a prior service requirement for candidacy for office (Exhibit 69, A.250);

3. Seven local unions (including Local 6) of the sixty-six local unions with receipts of more than $1,000,000 in 1964 have a prior service requirement for candidacy for office (Exhibit 71, A.260).

The foregoing facts are established by evidence adduced by the Secretary covering only the constitutions of certain national and international unions and the constitutions and by-laws of fewer than 200 local unions. A study of the constitutions and by-laws of the some 40,000 other local unions in the United States might well reveal that prior service qualifications for candidacy for local union office are even more prevalent than the government's evidence shows.

Whether qualifications for union office are reasonable depends, however, not on the ubiquity with which they are employed but upon the particular circumstances of the union, such as the size of its membership, the number,

size and geographical distribution of the employers, the nature of the industry, etc. The fact that the constitutions of most international and national unions * do not require previous service as a qualification for local union office has no relevancy to the reasonableness of the prior service requirement of Local 6 absent a showing that the local unions affiliated with such national and international unions are similarly circumstanced. The only union that has come to our attention similar in size and structure to Local 6 is Local 32B of the Building Service Employees International Union, and the by-laws of that union provide for prior service as one of two alternative bases for qualification for union office (Tr. 587).

(2)

The Secretary contends that it is arbitrary to predicate eligibility for office holding on Assembly membership and to deny it to persons who have been Department Delegates only (Secretary's Brief, p. 20).

The Secretary is wrong on the facts. Department Delegates are involved with the narrow and local matters that arise in the shops and District Councils (A.55-56). Assembly members, on the other hand, not only serve on the District Councils where they gain the same experience as the Department Delegates but also serve on the Assembly itself and on the union-wide committees all of which deal with the most important activities of the Union on a union-wide basis (A.82-87).

(3)

The Secretary argues that the prior service qualification is impugned by the fact that it is not required when positions are filled by appointment. Attention has been

* The reference in the Secretary's Brief (at p. 18) to the 23 unions having membership between 20,000 and 40,000 is misleading in failing to mention explicitly that these are national unions and not local unions.

directed to the appointment of temporary business agents (A.293) and of Delegates to the New York Hotel and Motel Trades Council who, under the By-Laws (A.202), are members of the Administrative Board (Secretary's brief, p. 19).

The fact that prior service is not required where persons are appointed to office, does not vitiate or impugn the qualification. It simply constitutes the use of an alternative method to achieve the same end, *i.e.*, the judgment of the Assembly, an experienced body representing the members, that a particular member is qualified for a particular position. Obviously there may be members of the Union who cannot satisfy the prior service requirement but who, by their activities in hotels and clubs, their attendance at courses and otherwise, demonstrate competency and leadership qualities. The use of the personal judgment of experienced persons in evaluating competency for office is authorized by the International Constitutions of both the International Ladies Garment Workers Union and the International Hod Carriers and Common Laborers Union (each of which has a membership of well over 400,000) which provide for the determination by a committee of whether a candidate for office has the necessary ability.*

Although the position of Delegate to the New York Hotel and Motel Trades Council is not an "office" within the meaning of the provisions of the Act requiring that union officers be elected by the membership, the truth is (though not referred to in the record),** that such Delegates have always been either Assembly members or officers of the Union eligible under the previous service requirement. The record shows that appointed business agents

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* "Union Constitutions and the Election of Local Union Officers —an Analysis", published by United States Department of Labor, Labor-Management Services Administration (1965) at pp. 63-64.

** No question regarding the appointment of Delegates to the Hotel and Motel Trades Council was raised until the case was in this Court.

who did not fulfill the prior service requirement were graduates of a special training course for union leadership which was organized by the Union and made available to the entire membership (A.88-90). This course, which was conducted under the direction of a professor of the Cornell University School of Labor Relations, furnished six months of instruction both in classrooms and in the field (A.93-94).

There are various ways of seeking competent union officials. Each has certain advantages; each has certain drawbacks. The desirability of any set of qualifications will depend upon the particular facts and circumstances of the union in question, its history, membership, organization, etc.

If the qualifications are reasonably adapted to achieve the desired objective, they should not be invalidated because the Secretary or even the Court believes that other qualifications would have been better. Such an approach would contravene the intent of Congress not to depart "needlessly from its long standing policy against unnecessary governmental intrusion into internal union affairs."*

> "It is not the function of the Secretary to determine what prescribed qualifications for office will best serve the purposes of union democracy nor to dictate what policy unions should follow in limiting candidacy for union office. The union's own rules as to eligibility must prevail unless they impose unreasonable qualifications. We are persuaded that in the present case the Secretary has trespassed upon an area of union governance which is left by the statute to the union's decision" (A.321).

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* *Wirtz* v. *Local 153, Glass Bottle Blowers Association, supra,* at 471.

C.

The prior service requirement does not frustrate the free and democratic union elections which the Act was designed to assure.

The statutory objective of free and democratic union elections has two aspects: (a) The objective of providing individual union members with a reasonable opportunity to stand for office; and (b) the objective of assuring the membership as a whole a reasonable opportunity to nominate and vote for candidates of their choice.

In dealing with the question whether the prior service requirement unreasonably restricts these objectives, we shall take them up in reverse order.

(1) The qualifications do not unreasonably restrict the members' opportunity to nominate and vote for candidates of their choice.

The underlying purpose of Congress in respect to union elections is set forth in the Senate Report on S.1555:

> "It needs no argument to demonstrate the importance of free and democratic union elections. Under the National Labor Relations and Railway Acts the union which is the bargaining representative has power, in conjunction with the employer, to fix a man's wages, hours and conditions of employment. . . . The Government which gives unions this power has an obligation to insure that the officials who wield it are *responsive* to the desires of the men and women whom they represent. The best assurance which can be given is a legal guaranty of free and periodic elections. *The responsiveness of union officers to the will of the members* depends upon the frequency of elections and an honest count of the ballots . . ." (Italics supplied)
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> S. Rep. No. 187, p. 20, 1 Leg. Hist. 416; See also H. Rep. No. 741, p. 16, 1 Leg. Hist. 773-774.

> "Union members have a vital interest . . . in the policies and conduct of union affairs. To the extent that union procedures are democratic they permit the individual to share in the formulation of union policy. This is not to say that in order to have democratically *responsive* unions, it is necessary to have each union member make decisions on detail as in a New England town meeting. What is required is *the opportunity to influence policy and leadership* by free and periodic elections." (Italics supplied.)
>
> S. Rep. cited above, at pp. 6-7, 1 Leg. Hist. 402-405.

The objective was to compel *responsiveness* on the part of union officials to the desires of the members and thereby *to allow the members effectively to influence union policy.* Once the size of the body politic is too large for town meetings and the people can act only through elected officials, this is the only meaningful objective in union government as in any representative democracy. There is one condition both necessary and sufficient for achieving it: union elections must afford the members *a genuine opportunity to change the administration, "to throw the rascals out".* Where such an opportunity is denied, there can be no democracy in a union. Where such an opportunity is given, the essence of representative democracy is preserved.

The evidence shows that there were at least 1700 members of the Union qualified to run for paid office in the 1965 election. As there were 31 paid offices to be filled, there were approximately 55 persons qualified as candidates for each office.* Common sense suggests that this is more than an ample pool of candidates to provide the members with a genuine opportunity to change the administration.

The Secretary contends (Brief p. 23) that because election to the Assembly is required to qualify for paid office, a change of leadership can come about in only one of two ways: (a) by a "palace revolt" or (b) by a two step

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* The Secretary concedes 60.

process of first electing candidates to the Assembly and then running those candidates for union office at the next election three years later.

This view can be sustained only on the premises that all those qualified to run for union office have become so by election on an Administration Party slate and that persons who have run as Administration Party candidates will remain loyal to that party regardless of the passage of time and changed circumstances in the Union. There is no warrant for these assumptions.

Not all persons qualified became so by election on an Administration Party slate. There are approximately 1200 former members of the old Shop Delegates Council who are now active members of the Union and qualified for paid office, none of whom was elected on any ticket (A.45). All of them are rank and file members who have no stake in the Administration Party and no association with the present leaders of the Union. In fact, one of the Membership Party candidates who ran for paid union office in the 1965 election was qualified by virtue of his membership on the old Shop Delegates Council.

The 500 odd persons eligible for paid office by virtue of Assembly membership are also rank and file members of the Union. Although elected to the Assembly on an Administration Party slate, they have no permanent association with or obligation to the present Union leaders. As active Union members they would be the first to join any meaningful opposition party if the Union were mismanaged. Indeed, three of the candidates of the Membership Party who ran for paid office in the 1965 election, including Charles Salavarria, a witness for the Government, were qualified by virtue of former membership in the Assembly to which they had been elected as candidates of the Administration Party. It is simply unrealistic to regard "parties" and "administrations" in a union as commanding the permanent loyalty of the persons at various times associated with them.

The speculations and generalizations at pp. 21-22 of the Secretary's brief advanced to prove the restrictive effect of the prior service qualification simply beg the question and assume the Secretary's position to be correct. They are no substitute for evidence which is notably lacking. Although the Secretary conducted a thorough and lengthy investigation into the affairs of Local 6 and interviewed scores of members, he did not produce one jot of testimony or evidence of any kind that even suggests that any of the 1700 odd members eligible to run for paid office wished to do so but was prevented or discouraged from doing so by any of the considerations advanced by him.

The only evidence is all to the contrary. Although in the 1965 election there was so little dissatisfaction with the incumbent officers that the opposition candidates of the Membership Party were defeated by a 7 to 1 margin, that party was nevertheless able to enlist 4 candidates from the pool of qualified persons to run for paid office on its slate. Its failure to enlist more candidates was simply due, as the District Court found (A.308), to the absence of any substantial rank and file dissatisfaction. The inference is overwhelming that if there had been any significant dissatisfaction among the members with the leadership of the Union, one or more full slates of candidates qualified for paid union office could and would have been placed in opposition to the Administration Party.

The percentage of the total membership of the Union eligible to run for paid office in the 1965 election is not significant. The existence of a genuine opportunity for the members to change leaders depends not on percentages but upon the presence of a pool of available candidates which is numerically large enough to furnish a reasonable number of alternative candidates for each office. A percentage of the membership adequate to furnish such a real choice in a union of 26,000 members with 31 offices to fill, obviously does not have to be as high as the percentage required to furnish a real choice in a union of 500 members even if there are only 10 offices to fill.

(2) The qualifications do not unreasonably restrict the opportunity of an individual member to stand for office.

On this aspect of the case the question is whether the qualifications are so harsh in their impact on members who wish to stand for office that they are arbitrary.

We submit that they are not.

Any member in continuous good standing for a year is eligible to run for the Assembly. If he is elected and serves for a year, he becomes qualified to be a candidate for paid office. On its face, this is not an arbitrary requirement. A rank and file member of Local 6 can win an Assembly seat without Administration Party support even in the face of general membership contentment. There are many situations where a candidate could be elected to the Assembly by obtaining only the votes of the other union members employed in his hotel (A.118-121). A fortiori, should there be a ground swell of discontent among the members, dissidents will have no difficulty whatever in gaining election to the Assembly.

To be sure, members who become eligible for paid office by virtue of their first election to the Assembly cannot run for such office until the next election. This, the Secretary complains (at p. 23 of his Brief), may cause a time lapse of 4 or more years. But a time lapse is inevitable where there is a previous service requirement, so to say that there may be no such time lapse would *ipso facto* outlaw all such requirements. In this case, the time lapse is caused by the By-Law provisions requiring a year's membership to run for the Assembly and providing for elections every 3 years—both of which are lawful under the Act. Requirements to run for important union offices which are otherwise reasonable do not become arbitrary because aspirants for such offices are subject to such delay.

• • •

The Secretary has suggested that an inference may be drawn that the officers of the Union have used the prior service requirements "to suppress and avoid competition at the polls" (Brief, p. 16); and he has gone so far as to assert (Brief, p. 28) that the requirement evidences "a climate in which opposition was discouraged". There isn't a word in the record to justify these inferences. There is much to contradict them.

Nothing was adduced to show that any of the leaders of the Union by means of the prior service requirement, or by means of the power to make appointments where that requirement was not satisfied, or by any other means, have ever attempted to perpetuate themselves in office or to suppress or avoid competition at the polls. Two members of the opposition Membership Party testified for the government; but there is not a word in their testimony to suggest any oppression by the incumbent union officials (A.121-149). The testimony of James Marley, President of the Union, plainly demonstrates the contrary (A.49-91, 166-199).

The suggestion that a climate "in which opposition was discouraged" can be inferred from the success of the Administration Party in the 1965 and prior elections or from the "absence of a contested election for most offices" is unwarranted. It is also contradicted by the findings of the District Court that ". . . the primary reason for the heavy vote in favor of the administration was the lack of any real grievance or issue against the union management" (A.308) and that "any substantial rank and file dissatisfaction would have produced many more opposing candidates for the Assembly than the 5 who actually ran" (*ibid.*). The reason for the success of the Administration Party is that the members of Local 6 are substantially contented in the enjoyment of the highest standards of wages, hours and working conditions of hotel employees

anywhere in the United States (A.167-177). In addition, Local 6 has provided its members with the following outstanding benefits and services:

1. Local 6 was the first hotel union in the United States to gain health, welfare and pension benefits for its members (A.169).

2. The labor relations of Local 6 have been so successfully handled that, during the 27 years since union management contracts were first established, each contract has been renewed without the necessity of strikes and all differences between hotel workers and employers have been resolved either by direct negotiations or by the submission of the dispute to an impartial chairman (A.171).

3. Local 6 has its own social service department to assist its members. It also participates in the sponsorship of a city-wide network of Neighborhood Service Councils where a member of the Union and his family may go for help in such areas as landlord and tenant problems, garnishment, income tax, consumer frauds and installment sales (A.173).

4. Local 6 has successfully sponsored various legislation, including a law to provide adequate social security coverage for tipping employees and a law to alleviate certain harsh features of the garnishment statute (A.174-175).

5. Since 1954, Local 6 has maintained a college scholarship plan and an educational advisory service for the children of its members (A.175-176).

The history and background of Local 6 contradict any claim or suggestion that the officers of the Union have tried to suppress opposition. On the contrary, they show that the Union leadership has always protected and preserved basic democratic rights and sought to encourage maximum membership participation in Union affairs.

For over twenty-five years, long before the enactment of the LMRDA, Local 6 took steps to secure and maintain free and democratic elections through open nominations, and the use of poll observers, secret ballots and voting machines.

Because the Union's members work in different crafts and in hotels which differ widely in size and quality (A.51-52), the members of one hotel and one occupation may, from time to time, have interests which diverge widely or even conflict with those of employees in other hotels and other occupations. It was important to reconcile these interests and to prevent the domination of the smaller by the larger (A.292). Accordingly, the Union from its very early days evolved a complex system of proportional representation established in its by-laws, designed to meet its needs and to insure that every group and every hotel would be properly represented in the government of the Union (A.180). At the same time, in order to encourage the rank and file members to become involved in the activities and affairs of the Union, the Union evolved its structure of Department, Department Boards and District Councils (*ibid*). These bodies also provide the membership with opportunity to raise issues peculiar to their craft or hotel, and to resolve these issues with their leadership (A.55-56, 85).

It is, we believe, in light of this history and background that the By-Law in issue must be judged.

> "Thus, the basic interpretive problem here is one of balancing between competing goods. It is desirable that aspirants for union office meet relevant minimum qualifications. It is also desirable that members who desire to become union officers should have the opportunity to stand for office. The problem is not unlike that faced by the political scientist who favors democratic elections of all public officeholders yet believes that only persons with certain education and experience should hold positions in the judiciary. In approaching the dilemma posed by the statute, the administrator is faced with the temptation to substitute his judgment for that of the union—a tempta-

tion to be avoided to the extent human frailty permits. The issue posed by the provision under discussion is *not* a question of the *desirability* of a given qualification which has been adopted by a union. Rather, the issue is whether under all of the circumstances (the history of the union, the duties of the office, the industry involved, the collective bargaining relationship, the craft or job classification represented, etc.) there is a reasonable justification for the use of the qualifying standard as a screen between aspirant and candidate. Based on the first four years of administrative experience under the act it is probably a safe conclusion that restrictions on candidate eligibility which are not violative of some other provision of the act may not be challenged successfully under the instant provision unless they are demonstrably arbitrary or capricious." *

POINT II

The existence and enforcement of the previous service requirement could not have affected the outcome of the election.

Section 402 of the Act (29 U.S.C. § 482) provides that in an action by the Secretary to set aside an election alleged to be in violation of the Act, the election shall be declared void and a supervised election ordered—

> "(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—
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> * * *
>
> "(2) that the violation of Section 401 may have affected the outcome of [the] election . . ."

The application of this statutory requirement to the case at bar must be considered in the light of the following uncontradicted facts:

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* Howard Jenkins, Jr., (member of the National Labor Relations Board) "Trade Union Elections" in Symposium "Regulating Union Government" edited by Estey, Taft & Wagner, at pp. 164-165.

1. The opposition Membership Party ran candidates for the General Offices of President and General Organizer; and its proposed candidates for the General Offices of Secretary-Treasurer and Recording Secretary, who were found to be disqualified for such office, both ran for the position of Delegate to the International Convention (A. 187-188). Thus, all of the Membership Party's nominees for General Office were on the ballot and all ran for union-wide positions voted on by the full membership (A.225-239). The Party also ran 5 other candidates for Delegate to the International Convention, 2 candidates for Business Agent and a number of candidates for the Assembly (*ibid.*).

2. The various Membership Party nominees who were eligible ran together as a single slate, with a common platform, their names appearing together on one row of the ballot (A.212-217, 300); and the Party's nominees who were ineligible indicated that if they had run they would have done so on the same slate, with the same platform and on the same line of the ballot (*ibid.*).

3. The Membership Party hired a campaign headquarters (A.148) and conducted a campaign in which all of the Party's candidates, disqualified as well as qualified, participated (A.148-149). Among other things, the Party distributed leaflets, visited hotels and conducted meetings in an all out effort to solicit votes (*ibid.*). One of the leaflets stated:

> "We urge you, though some of our names do not appear on the ballot, to vote Row B all the way because we are running all the way (Ex. C, A.280).

4. The wages, hours and other conditions of employment of the members of Local 6 are the highest of any hotel workers in the country (A.173).

As the Secretary concedes, the Membership Party candidates lost by margins of approximately 7 to 1.

These facts plainly establish that, even if the disqualified candidates had been permitted to run for the offices which they sought, the candidates actually elected would have been elected just the same and the disqualified candidates, as well as the candidates actually defeated, would have been defeated just the same. In other words, the existence and enforcement of the previous service requirement could not have affected the outcome of the election. The District Court so held, and the concurring Judge of the Court of Appeals agreed.*

Opposing this conclusion, the Secretary cites the fact that the language of the Kennedy-Ervin Bill (S. 505) authorizing the voiding of an election upon a finding that the violation "affected the outcome" was amended to authorize the voiding of an election upon a finding that the violation "*may have* affected the outcome". From this, and from an ambiguous statement on the Senate floor by Senator Goldwater, who was one of the minority members of the Senate Committee on Labor and Public Welfare in its report on S. 1555 (S. Rep. No. 187), the Secretary would have this Court infer a legislative intent to set aside all elections found to have been in violation of the Act except where the fact that the outcome was not affected by the violation is demonstrated with absolute mathematical certainty, *i.e.*, is shown to have been *impossible*. Conversely, the Secretary's position is that where there is a possibility, no matter how remote, that the alleged illegality affected the outcome of the election, the election must be set aside. He urges that where candidates have been disqualified, it can never be shown that it was impossible that the outcome of the election was affected. He concludes, therefore, that in the case at bar the fact of disqualification, without more and despite overwhelming evidence to the contrary, was

* As the majority of the Court of Appeals found the requirement to be reasonable, it never reached the question whether its application affected the outcome of the election.

sufficient to establish that the alleged violation "may have affected the outcome" of the election within the meaning of the Act.

The Secretary's interpretation nullifies statutory language.

Section 402 provides that the requisite finding that the violation "may have affected the outcome" of the election is to be made by the Court "upon a preponderance of the evidence". Under the Secretary's construction, only a showing of impossibility can avoid the setting aside of the election. But possibility and impossibility are absolutes to which the concept of "a preponderance of the evidence" can have no meaningful application. A possibility can be established and an impossibility disproved by a scintilla of evidence no matter how much or how weighty the evidence to the contrary. A possibility can be disproved and an impossibility established (which is what the Secretary asserts is the defendant's burden in seeking to show that an alleged violation did not affect the outcome of an election) only on the basis of *all* the evidence, without a grain of evidence to the contrary. Either way, there is no room for the Court to weigh the evidence. The Secretary concedes this when he states in his brief (at page 29), "in our view, the Court went beyond its proper role in attempting to weigh probabilities." Accordingly, under the Secretary's construction, the statutory mandate that the Court's finding must be "upon a preponderance of the evidence" is effectively nullified.

The Secretary's position conflicts with the legislative history of the Act.

As this Court has pointed out, Congress, in enacting the LMRDA did not intend to depart "needlessly from its long-standing policy against unnecessary intrusion into internal union affairs" (*Wirtz* v. *Local 153, supra*). If

such intrusion is to be avoided, an election should not be set aside in a 402 action unless it appears with some degree of likelihood—more than a bare possibility—that if there had been no violation, the election would have gone the other way. That this was the intent of Congress is shown by the following statements in the majority report of the Senate Committee on Labor and Public Welfare on S. 1555, made after the change in the language of the bill relied on by the Secretary:

> "Since an election is not to be set aside for technical violations but only if there is reason to believe that the violation has probably affected the outcome of the election, the Secretary would not file a complaint unless there were also probable cause to believe that this condition was satisfied."
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> S. Rep. No. 187 at p. 21, 1 Leg. Hist. 417.

> "If the court, upon a preponderance of this evidence, finds that . . . a violation of section [401] did or reasonably could have been expected to affect the result of an election, the court is to declare the election void and direct the holding of a new election under supervision of the Secretary of Labor."
>
> S. Rep. No. 187 at p. 48, 1 Leg. Hist. 444.

Congress intended to require substantially more than a showing of a bare possibility that the outcome was affected.

The insertion of the words "*may have*" no doubt reduced the quantum of proof required of the Secretary on the question whether the violation affected the outcome. It may be assumed for the sake of argument that in a disqualification case the Secretary's burden under the Act is *prima facie* satisfied by proof of the disqualification alone and that the burden of going forward then shifts to the defendant. But this is a far cry from the Secretary's posi-

tion that once there has been a bare showing of disqualification alone, the courts are foreclosed from exercising their normal function of determining facts by weighing evidence and evaluating probabilities and are compelled to find that the outcome may have been affected on the basis of the barest possibility regardless of evidence to the contrary.

In support of his position the Secretary cites *Wirtz* v. *Local Unions 410 etc.*, 366 F. 2d 438 (2d Cir. 1966) and *Wirtz* v. *Local Unions 406, etc. International Union of Operating Engineers*, 254 F. Supp. 962 (E.D. La. 1966).

In *Local Union No. 406*, the District Court interpreted the word "may" to indicate "the necessity only for the showing of a reasonable possibility that the violation would affect the outcome". As the concept of possibility is an absolute which has no degrees, it is meaningless to speak of a "reasonable" possibility. We conclude, therefore, that the Court in *Local Union No. 406* construed the statute to mean that the requirement that a violation may have affected the outcome of the election is satisfied by the showing of any possibility. We submit that this construction is erroneous for the reasons stated above.*

The language quoted in the Secretary's brief from the opinion of the Court of Appeals in *Local Unions 410, etc.*, seems on its face to lend some credence to the Secretary's position that where there has been an "exclusion of willing candidates from the ballots" this alone compels the conclusion that the violation "may have affected the outcome", regardless of all evidence to the contrary. But a reading of the whole opinion shows otherwise.

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* As the Court in *Local Unions No. 406* refused to set aside the election because the matters alleged by the Secretary had not been the subject of any internal protest in the union the Court's pronouncement on the matter here at issue was dictum.

The Court of Appeals in *Local Unions 410, etc.*, did not construe the Act to mean that the showing of a bare possibility that the outcome may have been affected is sufficient to satisfy the requirement. On the contrary, it stated that there must be proof "of a reasonable probability that the election may have been 'affected' by an alleged violation of § [401] (e)" (at p. 443). Such a "reasonable probability" was established in *Local Unions 410, etc.*, by proof of the disqualifications, by the fact that one of the disqualified candidates was a "proven vote-getter" who had won in an earlier election, and, as the elections were uncontested, by the absence of significant evidence to the contrary.

In the case at bar, there was overwhelming evidence to the contrary. The undisputed facts were stated by the District Court as follows:

> "By contrast [to the Local 410 case] . . . there was [in the case at bar] a contested election. In this contested election, there was an opposing candidate for the highest union office (President) and an opposing candidate for General Organizer, the second or third most important office in the union. There were eight opposing candidates for Convention Delegate, running in all districts, and three opposing candidates for district offices. Two of the candidates disqualified for general offices (only one of whom was disqualified for lack of prior office experience) were ruled eligible to run, and did run, in all districts for Convention Delegate. The opposing candidates established a campaign headquarters and conducted an apparently vigorous campaign with distribution of leaflets and weekly caucuses and election forums" (A.307).

On the basis of these facts and of the "heavy vote [of 7 to 1] in favor of the administration candidates" the District Court concluded that "the existence and enforcement of the by-law could not have affected the outcome of the election" (*ibid.*).

The Secretary's arguments to establish that "the record does not support [this] . . . conclusion" (Brief, pp. 27-29) are entirely speculative and ignore the overwhelming evidence in the record that even if there had been no disqualifications, the result of the election would have been the same because the members as a whole were well satisfied with the Union's leadership. That evidence fully sustains the findings of the District Court that (A.307-308):

> "Consideration has been given not merely to the effect of the by-law on those disqualified but to its possible effect in discouraging others from coming forward as opposing candidates. Nonetheless the heavy vote in favor of the administration candidates is convincing that the existence and enforcement of the by-law could not have affected the outcome of the election.
>
> "The evidence satisfies me that the primary reason for the heavy vote in favor of the administration was the lack of any real grievance or issue against the union management. The platform of the opposition Membership Party did not charge any abuses or misconduct or even any inefficiency; there was no attempt to state any specific complaints; there was no dramatic or important issue to rouse the membership against the incumbents. The appeal of the opposition was in substance that it could do the same job better.
>
> "The evidence also shows an important further reason for the election outcome. The administration ran candidates for all 372 places as delegates to the Assembly; against them were only 5 opposing candidates and of these only 2 were of the Membership Party. The history of earlier elections shows that when there are only a few candidates opposing a full slate for the Assembly, the opposing candidates are never elected. There is no suggestion that the qualification for Assembly candidacy (one year's membership) was unreasonable. Any substantial rank and file dissatisfaction would have

produced many more opposing candidates for the Assembly than the 5 who actually ran." *

The foregoing findings were made by the District Court after 4 days of trial in which many witnesses testified, including the President of the Union, one of its Business Agents and its Office Manager, as well as the Membership Party candidate who was qualified and ran for General Organizer and one of the Membership Party candidates who had been nominated for Vice President, but was disqualified.** The findings are, in brief, that even if there had been no disqualifications, the result of the election would have been exactly the same. These findings are not to be set aside unless "clearly erroneous" (Fed. R. Civ. P. 52(a); *United States* v. *United States Gypsum Co.*, 333 U.S. 364, 394-395, (1947); *Commissioner* v. *Duberstein*, 363 U.S. 278, 291, (1960); *In re Hygrade Envelope Corp.*, 366 F. 2d 584 (2d Cir. 1966)).

It cannot be said that the findings of the District Court as to what in fact happened are "clearly erroneous". Nor is it tenable to say, as the Secretary does, that the District Court "went beyond its proper role in attempting to weigh probabilities" and should have abdicated this fundamental judicial function in the face of a mere possibility which was controverted by overwhelming evidence. Accordingly, the conclusion that the alleged violation did not affect the outcome of the election must be sustained.

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* The Secretary not only dismisses these findings as speculative but goes so far as to state as fact, in direct contradiction to the findings, that "the absence of a contested election for most offices was itself a reflection of a climate in which opposition was discouraged—a climate evidenced by the prior office-holding rule" (Brief, p. 28). The real reason for the lack of contest is explained in the findings of the District Court. The "climate" by which the Secretary seeks to explain it exists only in his imagination. There is nothing in the case to support it.

** So the witness testified (A.124). The Minutes of the Election and Objections Committee indicate he was nominated for Business Agent (A.214).

POINT III

The alleged violations about which no member complained to the Union and which the Union had no opportunity to redress prior to the intervention of the Secretary were properly stricken from the Secretary's complaint and excluded from the case.

The only alleged violation of the Act of which any member of Local 6 complained to the Union was the alleged illegality of the prior service requirement. However, in his original complaint in this action, the Secretary set forth three other violations of the Act, namely:

(1) That the Union failed to give adequate and timely notice to its members of the boundaries of its election districts; (A.4-5)

(2) That the right of the members to vote was subjected to "improper interference" (*ibid.*); and

(3) That certain "offices" which should have been elective were filled by appointment (*ibid.*).

On motion by the Union these additional alleged violations were stricken from the complaint and have been excluded from the case.

The Secretary does not claim that any member made any complaint to the Union about these alleged violations, or exhausted intra-union remedies with respect to them, or compained of them to the Secretary. He does not assert, nor can it be claimed, that the alleged violation of which complaint was actually made to the Union should have put the Union on notice of the other three alleged violations so that it could have corrected them prior to the intervention of the Secretary into its internal affairs. The Secretary's position is simply that as the stricken violations were discovered by him in the course of his investigation and were called to the attention of the Union before the

commencement of this action, so that the Union "had the same opportunities for self-correction that would have followed from an internal union proceeding", such violations may be included in this case.

There is no merit to the Secretary's position.

The pertinent portion of the Act provides:

> "Sec. 402. (a) A member of a labor organization—
>
> (1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, . . . may file a complaint with the Secretary . . . alleging the violation of any provision of section 401 . . .
>
> • • •
>
> "(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall . . . bring a civil action . . . to set aside the invalid election . . ."

It thus appears on the face of the statute that the Secretary may proceed to vindicate only those violations as to which a union member has exhausted internal union remedies and procedures and made a complaint to the Secretary.

Such a construction is consonant with the general purpose of Congress in enacting the LMRDA not to depart "needlessly from its long standing policy against unnecessary Governmental intrusion into internal union affairs." It is required by the intent of Congress respecting actions under Section 402 as expressly manifested by the following language in the report of the Senate Committee on Labor and Public Welfare:

> "In filing a complaint [with the Secretary] the member must show that he has pursued any remedies available to him within the union and any parent body in a timely manner. This rule preserves a max-

> imum amount of independence and self-government by giving every international union the opportunity to correct improper local elections. If the member is denied relief by the union . . . he may complain to the Secretary".
>
> (S. Rep. No. 187, at p. 21, 1 Leg. Hist. 417).

The question involved here was considered by this Court in *Wirtz* v. *Local Union No. 125,* 389 U.S. 477 (1966). The Court decided there that the Secretary was entitled to maintain an action under Section 402 predicated upon an alleged violation of which no complaint had been made to the union where the union had received "fair notice" of such violation by reason of another complaint lodged with it. The Court held that the Secretary might "include in his complaint at least any § 401 violation he had discovered which the Union had a fair opportunity to consider and redress in connection with a member's initial complaint" (389 U.S. at 484).

But in the case at bar, the Secretary is asking the Court to go much further. He is asking the Court to rule in his favor on the question that was expressly left open in *Local Union No. 125* and to hold that "a member's protest triggers a § 402 enforcement action in which the Secretary would be permitted to file suit challenging any violation of § 401 discovered in his investigation of the member's complaint" (*Id.* at 482).

The Secretary's position makes meaningless all of the language of § 402 requiring the exhaustion of internal remedies. If the integrity and independence of unions can be adequately protected and preserved by waiting until an investigation by the Secretary before giving them notice of alleged election violations and affording them an opportunity to redress them, then the statutory requirement for the exhaustion of union remedies is pointless. Congress might as well have provided that proceedings under § 402 may be instituted with a member's complaint to the Secretary or even on the Secretary's own initiative.

Thus the Secretary's "trigger" theory must be rejected because it conflicts with Congressional policy and nullifies statutory language. Accordingly, as the Secretary makes no claim that the Union in this case had "fair notice" of or "fair opportunity to consider and redress" the stricken violations before the institution of the investigation, those violations were properly excluded from the case.

Afterword

The By-Laws of the Union were amended effective December 6, 1966. The amendments effected the following changes respecting the conduct of Union elections:

1. Executive Board members, who were formerly chosen by the Assembly from among its own members, are now elected by the Union membership as a whole.

2. The prior service requirement for eligibility to run for paid office was amended to add two additional categories of eligibles, namely, (a) persons who have been Department Delegates and (b) persons who have been members of the Union for five years (A.281).

The amendment of the prior service requirement was predicated upon the Union's view that the administration of its affairs is presently sufficiently mature, standardized and well organized that minimum standards for the competency of elected officials can now be adequately assured by permitting Department Delegates and even rank and file members with five years' membership in the Union to be qualified for paid office. Another underlying motive for amending the prior service requirement was the realization by the Union that with the passage of time the pool of available candidates for office diminishes due to attrition by death, age, physical incapacity or other causes. Although

it does not appear in the record, the addition of the two new categories of eligibles not only presently increases the size of the pool of persons qualified as candidates for paid office to more than 16,000, which provides better than 500 eligibles for each office, but also assures an equally large number of eligibles in the foreseeable future.

The Union's next regular general election, which is to be held on May 16, 1968, will be conducted under its By-Laws amended as above set forth. At the time of the writing of this brief, it appears likely that the election will take place while the case is *sub judice*.

The conduct of a new election under the amended By-Law will render academic the existing controversy before this Court which concerns the validity of the 1965 election under the old By-Law. We suggest that in such event this action will be moot. (*U. S.* v. *Alaska Steamship Co.*, 253 U.S. 113, (1920); *St. Pierre* v. *U. S.*, 319 U. S. 41, (1943); *California* v. *St. Pablo & Tulare Railroad Co.*, 149 U. S. 308, (1893)).

We are aware that in *Wirtz* v. *Local 153, Glass Blowers Association*, 389 U.S. 463 (1968), and *Wirtz* v. *Local Union 125*, 389 U.S. 477 (1968), this Court held that intervening union elections did not moot Section 402 actions by the Secretary. The Court's decisions in those cases seem to have been predicated upon the fact that under the circumstances of the cases the "happenstance intervention of an unsupervised election", (389 U.S. at 474), "would immunize a proved violation from further attack and leave unvindicated the interests protected by § 401" (*Id.* at 475). In this connection, it should be noted that the intervening election in *Local 153* was held under the very same by-law that was the basis of the Secretary's attack, so that a holding of mootness would have left the violation unvindicated. In *Local Union 125*, the gravamen of the Secretary's complaint was impropriety in the *conduct* of the

election; and this created a situation where the holding of an unsupervised election would give no assurance that "the unlawfulness infecting the challenged election" had been eliminated.

In the case at bar, on the other hand, there is no charge of misconduct. The only charge is that the 1965 election was conducted under an unlawful by-law. The new election will not be conducted under that By-Law but instead under a By-Law which meets the thrust of the objections to the old By-Law.

Therefore, the election to be held in Local 6 in May under the amended By-Law would not be, in the words of this Court "the intervention of an election in which the outcome might be as much a product of unlawful circumstances as the challenged election . . .", nor would it "immunize a proved violation from further attack and leave unvindicated the interests protected by § 401".

Supervised elections are well adapted to cases of misconduct where impartial supervision should be a sufficient condition to eliminate the evil. They are not appropriate in cases where the only violation alleged is that the election was held pursuant to a by-law which violated § 401, for in such a case impartial supervision of the election is not a necessary nor, indeed, a sufficient condition to achieve the statutory objective. What is needed is a change in the by-law.

Where there is no charge of misconduct as to the manner in which the election was held (as there was in the *Local 125* case), where the allegedly unlawful by-law has been amended so as to eliminate the provision underlying the objection, and where, as may occur in this case, an election is conducted pursuant to the new by-law, it follows that a holding of mootness would be appropriate.

CONCLUSION

For all of the reasons stated herein, it is respectfully submitted that either the judgment appealed from should be affirmed or the case should be dismissed as moot.

Respectfully submitted,

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SUPREME COURT, U. S.
APR 16 1968
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NO. 891

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR,

Petitioner

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

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INDEX

	Page
SUMMARY OF ARGUMENT	2
ARGUMENT	10
I. The Courts Should Not Overturn A Union Rule Regulating Eligibility To Run For Office Unless The Secretary Of Labor Proves That The Rule Is Not A Rational Means Of Achieving A Legitimate End	10
II. In A Title IV Lawsuit The Secretary Does Not Have The Power To Raise And The District Courts Do Not Have The Jurisdiction To Consider Issues Which The Union Did Not Have A Fair Opportunity To Consider In Connection With An Internal Union Appeal	29
CONCLUSION	50

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CASES:

Bantam Books v. *Sullivan*, 372 U.S. 58 (1963) 79, 45

Holmberg v. *Armbrecht*, 327 U.S. 392 (1946) 46

International Brotherhood of Teamsters v. *Wirtz*, 346 F.2d 827 (C.A. D.C. Cir., 1965) 41–42

Locals 545, etc., Operating Engineers v. *Wirtz*, 381 F.2d 448 (C.A. 2d Cir., 1967) 42

Musicians v. *Wittstein*, 379 U.S. 171 (1964) 18

New State Ice Co. v. *Liebmann*, 285 U.S. 262 (1932) 24–25

Smith v. *Allwright*, 321 U.S. 649 (1941) 19

United States v. *L. A. Tucker Truck Lines*, 344 U.S. 33 (1952) 43–44

Page

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Volkswagenwerk Aktiengesellschaft v. *Federal Maritime Commission*, ... U.S. ....., 36 U.S. Law Week 4197 (March 6, 1968) 10

Wirtz v. *Bottle Blowers Assn.*, 389 U.S. 463 (1968) 18, 23, 49

Wirtz v. *Laborers' Union*, 389 U.S. 477 (1968) 5, 6–7, 9 29, 31, 32–33, 43, 45, 48, 49

Wirtz v. *Local 191, Teamsters*, 321 F.2d 455 (C.A. 2d Cir., 1964) 40

STATUTES:

Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519, 29 U.S.C. 401):

Title IV 3, 7, 8, 13, 14, 15, 18, 35, 38, 44, 49

Section 401(a) 14

Section 401(b) 14

Section 401(c) 14

Section 401(e) 2, 3, 10, 13, 14, 15, 19, 21, 28

Section 401(f) 14

Section 401(g) 14

Section 401(h) 14, 40

Section 402(a) 5, 6, 8, 9, 24–30, 33, 34, 35, 36, 39, 44, 46, 47

Section 402(b) 5, 6, 29–30, 33, 34, 35, 36, 45, 46, 47

Section 402(c) 49

Page

Section 601 ..... 40, 45
Section 607 40

MISCELLANEOUS:

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CONGRESSIONAL:

105 Daily Cong. Rec. A-6573, Appendix July 29, 1959, Leg. Hist. 815 37
105 Cong. Rec. 6741, Senate, April 25, 1959, Leg. Hist. 805 16

Page

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105 Cong. Rec. 10947-10948, Senate, June 12, 1958, Leg. Hist. 1093 35–36

105 Cong. Rec. 11348-11349, Senate, June 16, 1958, Leg. Hist. 754 15

105 Cong. Rec. 15707-15708, House, Aug. 12, 1959, Leg. Hist. 823 38

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House Conf. Report No. 1147, 86th Cong., 2nd Sess., Leg. Hist. 835 37

Senate Report No. 187, 86th Cong., 1st Sess., Leg. Hist. 118, 778, 780, 783 ..... 4, 13, 16–17, 22, 37, 38

Senate Report No. 1684, 85th Cong., 2nd Sess., Leg. Hist. 701, 702 ..... 16, 36–37, 42

H.R. 8342, 86th Cong., 1st Sess. 34

S. 1002, 86th Cong., 1st Sess. 47

S. 1555, 86th Cong., 1st Sess. 13, 34, 35

S. 3751, 85th Cong., 2nd Sess. 34, 35

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Hearings on H.R. 3540, etc. before a Joint Subcommittee of the Committee on Education and Labor, House of Representatives, 86th Cong., 1st Sess., 1477-1478, 1494 17–18

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

This brief *amicus* in support of the position of the respondent is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), a federation of 129 national and international labor unions having a total membership of approximately 14,000,000, with the consent of the parties, as provided for in Rule 42 of the Rules of this Court.

The opinions below, jurisdiction, questions presented and the statutory provisions involved are set out at pp. 1-2, 35-42 of the Secretary of Labor's Brief.

SUMMARY OF ARGUMENT

I

The court below held that the Secretary of Labor has the burden of proving that an eligibility rule he challenges under Section 401(e) of the Labor Management Reporting and Disclosure Act of 1959 (73 Stat. 519, 29 U.S.C. 401) is unreasonable. We submit that this Court should hold that this burden is carried only when the Secretary can prove that the rule in question is not a rational means of achieving a legitimate end. As the Court of Appeals concluded, under that standard the Secretary did not prove his case here. The Secretary argues that where the effect of an eligibility rule is to "substantially inhibit the potential breadth of choice" of candidates, the burden of proof is shifted to the Union to justify its rule (Sec. Br. 14-15); that a justification based on the premise that it is legitimate for the membership to enact provisions designed to insure knowledgable and experienced union officers is clearly suspect and probably insufficient as a matter of law, since the "scheme of democracy in this country . . . has . . . been to place trust in the common sense and judgment of an informed electorate" (Sec. Br. 16-17); and that a union must demonstrate that the means it employs to achieve its end is "as narrow as possible" and does not "facilitate the in-group's attempt to suppress . . . competition at the polls" (Sec. Br. 15-16).

Congress did not set out articulated guidelines from which to ascertain the meaning of the term "reasonable qualifications" in Section 401(e). It did, however, express a "mood," *Universal Camera Corp.* v. *National Labor Rela-*

tions Board, 340 U.S. 474, 487 (1951). The basic structure of Title IV, the clearly evinced overall philosophy of the Senators responsible for drafting that Title, and the very nature of eligibility rules all indicate that it is the approach of the Court of Appeals, rather than that of the Secretary, which is faithful to that mood.

The entire plan of Title IV indicates that Congress intended the widest possible preservation of established union procedures and practices. The Act altered or displaced union laws only to the extent that demonstrated past abuses established a compelling need. The statements of overall philosophy made by the Senators who supported and drafted Title IV confirm this interpretation of the Act. And where Congress was careful to preserve, the Secretary and the courts should not rush in to destroy. The broad sweep of authority the Secretary seeks in the instant case would be radically inconsistent with the purposes underlying the Act. This is especially clear since there is no consensus on the proper applicable governing rules in this area to guide him. For eligibility rules by their nature can be evaluated only when viewed in context as an organic outgrowth of a particular polity. Thus, unless the standard we propose is adopted, the Secretary and the courts will be left at large to make *ad hoc* judgments, in other words, they will assume the role of paternalistic regulators contrary to the intent of Congress. The Secretary's brief demonstrates that he has been unable to articulate a coherent approach to Section 401(e) that would place any limits on his discretion. Thus two of the broad *a priori* generalizations offered by the Secretary—that public elections set the standard for union elections, and that the practice of democracy precludes eligibility rules designed to insure wise and experienced leaders—are in direct conflict. The third of his generalizations—that the means

used must be as narrow as possible—is patently unworkable.

In practical terms, the Secretary's position comes down to the proposition that the concept of union democracy requires unions to allow any member who desires to run for office to appear on the ballot, even though he has not established qualifications to hold office by a period of service to the organization or a prior showing of interest in its affairs. He finds support for his position in the statement in Senate Report No. 187 that "individual members are fully competent to regulate union affairs" (Sec. Br. 17). That Report, read in its entirety, is instinct with the intention to allow union members to establish a form of constitutional democracy that is responsive to their needs, as long as the rules they adopt are enacted pursuant to proper democratic procedures. Depriving union members of this right of free men would not only substitute Secretarial and judicial control of unions for membership control contrary to the intent of Congress; it would also threaten the overall public interest. There is no assurance that the Secretary will be invariably correct in believing that the constitutional safeguards the membership has developed are unnecessary. The general public as well as the members will suffer should such safeguards, if they are prudent ones, be overturned.

The arguments made in the Secretary's brief do not appear to be the ones upon which administrative decisions are made. So far as we can determine, they are simply lines of attack evolved for the purposes of this litigation to defend a decision originally based on the bare proposition, now evidently discarded, that any rule which disqualifies a substantial majority of the membership is suspect. Thus the Secretary's arguments must stand or fall on their merits alone; they cannot be defended by an appeal to

administrative expertise. Our assertion is based on the Secretary's Statement of General Policy and Interpretation under Section 401(e), 28 F.R. 14380 (1963), BNA Labor Relations Expeditor 7135. This "effect" test is clearly unsound. The number or percentage of members eligible to appear on the ballot is not a valid indication of whether a rule is reasonable or not.

We wish to make it clear that we do not argue that every eligibility rule must be allowed to pass muster. We argue simply that the courts should overturn only those rules which are arbitrary or which lack a logical connection to a legitimate end. Thus our position is that the courts and the Secretary should normally defer to the decisions of the membership in order to assure that the regulation of eligibility rules is not allowed to work at cross purposes with Congress's overriding intent to limit external interference in union affairs.

II

In *Wirtz* v. *Laborers' Union*, 389 U.S. 477 (1968), this Court considered for the first time the meaning of Sections 402(a) and 402(b) of the Act. The essence of the AFL-CIO's position in its brief filed in that case was that the Secretary has the power to raise and the lower courts have the jurisdiction to consider only those issues which "the union had a fair opportunity to consider in connection with its consideration of [a member's] internal appeal . . . The touchstone is the complaining member's intent as revealed by a liberal and sympathetic reading of his internal appeal" (AFL-CIO's Brief in Nos. 57 & 58, This Term, p. 28). We argued further that because of the equities which favor officers whose elections have not beeen challenged, this general standard should be applied so as to preclude the Secretary from seeking to invalidate the elections of all

the officers elected at the same time on the basis of an internal complaint which alleged a defect in the election of one (*Id.* at 27-28). In *Laborers' Union,* the Secretary argued, as he does here, that Sections 402(a) and 402(b) should be viewed as entirely discrete. His position was, and is, that if he receives a complaint from a union member who has filed an internal complaint, he has *carte blanche* to introduce any issue he may choose into Title IV court litigation without regard to whether or not that issue was raised by a complaint filed with the union (Secretary's Br. in Nos. 57 & 58, This Term, pp. 44-49; Secretary's Br. in No. 891, This Term, pp. 30-34). On the facts of this case the Secretary is forced to make this argument. For the new matters he sought to raise were completely unrelated to the matter raised by the union members internally (App. 19-20). In response to these arguments, this Court held (389 U.S. at 481-482):

> "On the facts of this case we think the Secretary is entitled to maintain his action challenging the June 8 general election because respondent union had fair notice from the violation charged by Dial in his protest of the runoff election that the same unlawful conduct also occurred at the earlier election. We therefore need not consider and intimate no view on the merits of the Secretary's argument that a member's protest triggers a § 402 enforcement action in which the Secretary would be permitted to file suit challenging any violation of § 401 discovered in his investigation of the member's complaint."

We think it fair to say that this holding closely tracks the AFL-CIO's main position on the proper governing standard while rejecting the application of that standard which we proposed. Certainly, we do not see how this Court could have been more explicit in stating that its decision was not to be taken as an endorsement of the Secretary's basic argument. Moreover, the Court's rationale in *Labor-*

ers' Union (*Id.* at 482-483, 484) recognized that Sections 402(a) and 402(b) harmonize two competing interests: the efficient utilization of the enforcement powers granted to the Secretary, and the preservation of union appellate procedures which have been incorporated into the Act's remedial scheme. The "fair opportunity" test, which is the governing standard we propose, and which has won limited approval from this Court in *Laborers' Union,* is consistent with the effectuation of both aspects of Congress intent. Indeed, it is the only standard which fulfills that role. The "trigger" theory advanced by the Secretary, on the other hand, is completely unfaithful to that intent, for it exalts the Secretary's powers to such an extent that the competing interest in the preservation of union internal appellate procedures is rendered trivial.

The legislative history supports our position. The supporters of Title IV in both Houses, and especially in the Senate where this portion of the Act was written, recognized that the public interest in union democracy, as they viewed it, would be secured most satisfactorily by insuring that union members who were dissatisfied with some aspect of their organization's election procedures, and who were unable to obtain internal relief, would receive government assistance in pressing their case in court. As a corollary, the legislators believed that in the absence of any expression of membership dissatisfaction to the union itself, the union's members should be free, without government direction, to run their own elections. The Congressional conception of the public interest rests on three considerations: first, that there is every reason to trust in the probity, judgment and democratic instincts of union members; second, that the vitality of union democracy would be dissipated if the autonomy of the organization were not respected, and if its internal procedures were bypassed and permitted to atrophy; third, that union democracy would

be subverted if the Government were given discretion to intermeddle in internal union matters as to which no member had a complaint. In short, Congress recognized that a limitation on the coercive powers of the Government was an integral component of its overall conception of the public interest in union democracy.

Congress expressed this conception of the public interest by passing legislation which set up a system that balances union autonomy and government regulation. This end was achieved by a legislative guarantee that unions would be responsive to their membership. This guarantee was redeemed by authorizing the Secretary to use his coercive powers for the limited purpose of helping union members achieve the type of organization they desire, rather than by authorizing him to force his views of how the organization should be governed on the membership without regard to their desires. *See, in general,* Cox, *The Role of Law in Preserving Union Democracy,* 72 Harv. L. Rev. 609 (1959); Mitchell, *Safeguards for Union Democracy,* in Slovenko, Ed., Symposium on the Labor-Management Reporting and Disclosure Act of 1959, 135 (1961).

The foregoing, we submit, is the only rational explanation for the inclusion of Section 402(a) in the Act. The requirement that only complaints by union members may be used as a basis for a court suit, and the further requirement that only complaints which have been tendered to the union are a proper predicate for coercive action by the Secretary, make sense only if it is recognized that the enforcement mechanism of Title IV is the product of the desire, first, to promote the responsibility of the union to its members and, equally, of the members to their organization, and second, to protect union self-government and membership sovereignty from the overweening weight of an external government bureaucracy.

The Secretary's main argument in support of his position (Sec. Br. 31, 33) is that the "trigger" theory can be brought into conformity with the complex purposes of the Act by allowing him to substitute a notification to the union prior to instituting suit, which advises it that he is going to proceed on matters which have not been raised by any member, for the Congressional requirement of exhaustion of internal remedies by union members. This argument is untenable. The purpose of Section 402(a) is to foster and protect the public interest in responsible union self-government "by channeling members through the union's internal processes . . . [thereby] accustom[ing] members to utilizing the remedies made available within their organization." *Laborers' Union,* 389 U.S. at 484. And government by the Secretary in the form of a threat to take coercive action by bringing suit which would subject the union to great expense, unless his fiat is obeyed, rather than through a process of interaction between the union and its members, may be called any of several things but not free and democratic self-government. For this Court has often recognized that actions taken under a threat of litigation are not products of free will, *see e.g. Bantam Books* v. *Sullivan,* 372 U.S. 58, 66-67 (1963).

As this Court recognized in *Laborers' Union,* 389 U.S. at 484, the Congressional conception of the public interest in union democracy was multifaceted. It was not an expression of a single-minded belief in the efficacy of coercive regulation through lawsuits brought by the Secretary. That aspect of the Act's enforcement machinery must be harmonized with other interests that were also valued by Congress including union autonomy, membership responsibility, and the preservation of internal union appellate procedures. To extend the Secretary's powers to their furthest possible reach is to destroy these other equally valid interests. On

this basis, we submit that the proper balance can only be struck by limiting the issues that the Secretary can raise in a Title IV court action to those which the union had a fair opportunity to consider in connection with a member's internal complaint.

ARGUMENT

I

THE COURTS SHOULD NOT OVERTURN A UNION RULE REGULATING ELIGIBILITY TO RUN FOR OFFICE UNLESS THE SECRETARY OF LABOR PROVES THAT THE RULE IS NOT A RATIONAL MEANS OF ACHIEVING A LEGITIMATE END

The instant case presents this Court with the opportunity to set out the basic standard of legality upon which union rules governing eligibility to run for union office will be judged under Section 401(e) of the Labor Management Reporting and Disclosure Act of 1959 (73 Stat. 519, 29 U.S.C. 401 *et. seq.*). As the court below properly recognized (App. 318), this task in the first instance involves statutory construction rather than a determination of questions of fact. Thus, while the views of the Secretary of Labor are entitled to respectful consideration, it is this Court which has the final authority, *Volkswagenwerk Aktiengesellschaft* v. *Federal Maritime Commission*, ... U.S. ....., 36 U.S. Law Week 4197, 4200 (March 6, 1968). That authority should be exercised to affirm the judgment below, for not only was the Court of Appeals correct in its characterization of the nature of the question presented, but it was also correct in formulating the answer to that question (App. 318, 320-321):

"In deciding the issue of reasonableness we must

keep in mind the fact that the Act did not purport to take away from labor unions the governance of their own internal affairs and hand that governance over either to the courts or to the Secretary of Labor. The Act strictly limits official interference in the internal affairs of unions. See, *Calhoon* v. *Harvey*, 379 U.S. 134 (1964); *Gurton* v. *Arons*, 339 F. 2d 371 (2d Cir. 1964). The Act prescribes only certain basic minima and leaves the area not covered by these minimum prescriptions to the decisions of the unions themselves."

* * * *

"We do not believe that it is unreasonable for a union to condition candidacy for offices of greater responsibility upon a year of the kind of experience and training that a union member will acquire in a position such as that of membership in Local 6's Assembly."

"The by-laws provide a procedure for their amendment. If the rank and file members of the union had felt at any time during the many years in which the eligibility restriction has been in effect that they were being unjustly barred from office they could have sought to amend the restrictive provision. The record shows no attempt to bring about such an amendment."

The Secretary of Labor makes much of the fact that only about 1,700 members of the union are eligible for election to the 31 elective offices. However, when this number is combined with the fact that all members in good standing for one year have the opportunity to become eligible for office by getting themselves elected to seats in the four hundred-odd member Assembly, the numbers, per se, do not seem to us to establish unreasonableness.

"It is not the function of the Secretary to determine what prescribed qualifications for office will best serve the purposes of union democracy nor to dictate what policy unions should follow in limiting candidacy for union office. The union's own rules as to eligibility must prevail unless they impose unreasonable quali-

fications. We are persuaded that in the present case the Secretary has trespassed upon an area of union governance which is left by the statute to the union's decision. We do not believe that a proper reading of the statute in the light of its history can justify the Secretary's finding that the union has violated Section 401 by adopting the contested eligibility requirements."

The Court of Appeals thus held that the Secretary has the burden of proving that the eligibility rule he challenges is unreasonable, and that his burden is a heavy one in light of the Act's overall policy of "strictly limit[ing] official interference in the internal affairs of unions." While the nature of that burden does not lend itself to precise formulation, we submit that the proper starting point for analysis is that the Secretary must show that the union's rule was not a rational means of achieving a legitimate end. And it is clear that the Court of Appeals concluded that provisions designed to insure experienced and knowledgable officers serve a legitimate end, and that the Union's means of attaining that end—requiring prior service in the Assembly or Shop Delegates' Council—was rational.

Every aspect of the lower court's opinion is rejected by the Secretary in his brief. He argues that where the effect of an eligibility rule is to "substantially inhibit the potential breadth of choice" of candidates, the burden of proof is shifted to the Union to justify its rule (Sec. Br. 14-15); that a justification based on the premise that it is legitimate for the membership to enact provisions designed to insure knowledgable and experienced union officers is clearly suspect and probably insufficient as a matter of law, since the "scheme of democracy in this country . . . has . . . been to place trust in the common sense and judgment of an informed electorate" (Sec. Br. 16-17); and that a union must demonstrate that the means it employs to achieve its end

is "as narrow as possible" and does not "facilitate the in-group's attempt to suppress . . . competition at the polls" (Sec. Br. 15-16).

The provision in Section 401(e) of the Act dealing with union rules governing eligibility to run for office and preserving the right of unions to establish "reasonable qualifications uniformly imposed" on eligibility was inserted in S. 1555, 86th Cong., 1st Sess. (1959) by the Senate Labor Committee. It was enacted without change as part of the final Act. The Senate Labor Committee's Report on S. 1555 (Senate Report No. 187, 86th Cong., 1st Sess. (1959)) contains no explanation of the import of this provision, nor were there any during the floor debates. Moreover, so far as we have been able to ascertain, there is nothing in the Congressional reports or debates prior to S. 1555 which casts any light on the type of union rules that Congress considered unreasonable.

Thus Congress did not set out articulated guidelines from which to ascertain the meaning of the term "reasonable qualifications." It did, however, express a "mood," *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 487 (1951). The basic structure of Title IV, the clearly evinced overall philosophy of the Senators responsible for drafting that Title, and the very nature of eligibility rules all indicate that it is the approach of the Court of Appeals, rather than that of the Secretary, which is faithful to that mood.

The structure of the Act shows that Congress did not paint with a broad brush in drafting Title IV, leaving it to the Secretary in his discretion to evolve a workable statutory program within the broad limits set by the legislature. Instead, Congress, having before it detailed studies of union constitutions, such as United States Department of Labor, Bulletin No. 1239, Union Constitutional Provi-

sions: Election and Tenure of National and International Officers (1958), and National Industrial Conference Board, Handbook of Union Government Structures and Procedures, Studies of Personnel Policy No. 150 (1956), *see* Rezler, *Union Elections: The Background of Title IV of LMRDA,* in Slovenko, Ed., Symposium on the Labor Management Reporting and Disclosure Act of 1959, 482 (1961), chose to regard those constitutions as the basic governing law in this area, *see* Sections 401(e), 401(f), and 401(h), and to legislate interstitially within the framework they provided. In other words, Congress in both Title I and Title IV established a procedural framework to protect membership voting rights on the theory that having done so, the members, rather than the Secretary, could be trusted to evolve constitutional systems responsive to their needs and to the broader public interest as well.

Where Congress did preempt membership decision-making, it dealt in minute particularity with discrete subjects which prior experience had indicated lent themselves to abuses. Thus provisions were made: to accord bona fide candidates mailing rights and membership list inspection and election observation privileges (Section 401(c)); to guarantee the publication of election notices, and to guard against abuse of the check-off system (Section 401(e)); to delineate the permissible uses of union monies during campaigns (Section 401(g)); and to provide adequate officer removal procedures (Section 401(h)). In general, where standards, which are by their nature arbitrary, had to be set, Congress itself set them. Accordingly it was decided: that international and national unions must hold elections once every five years and local unions once every three years (Sections 401(a) and 401(b)); that inspections of membership lists may be made once within a thirty-day period prior to the election (Section 401(c)); that every member in good standing is to be eligible to vote, that elec-

tion notices are to be mailed within fifteen days of the election, and that ballots and other records pertaining to the election are to be preserved for one year (Section 401 (e)). Finally, where Congress did delegate discretionary authority to the Secretary, it did so only in areas where the very nature of the subject matter and the existence of a body of prior law tend to preclude him from roaming far afield. Thus the Secretary is empowered to insure that unions provide adequate safeguards for a fair election and reasonable opportunities for nominations, and he is also authorized to prevent improper interference with members or reprisals against them based on their political activity (Sections 401(c) and 401(e)). In giving substance to these assignments, the Secretary works against the background provided by the National Labor Relations Board's thirty years of experience in running elections free of the influence of restraint or coercion.[1]

The entire plan of Title IV indicates, therefore, that Congress intended the widest possible preservation of established union procedures and practices. The Act altered or displaced union laws only to the extent that demonstrated past abuses established a compelling need. The statements of overall philosophy made by the Senators who supported and drafted Title IV confirm that this is so. They averred that Congress did not intend to "write or rewrite the constitution and bylaws of the Unions" (105 Cong. Rec. 11348-11349, Senate, June 16, 1958 (Colloquy, Senators Morse and Johnson), United States Department of Labor, Legislative History of the Labor Management Reporting and

[1] In recognition of the influence of Board law the Secretary in *Wirtz* v. *Bottle Blowers Assn.*, 389 U.S. 463 (1968) argued successfully that Congress gave him the power to run supervised elections so that he could ensure "laboratory conditions," a Board-created concept, *see* Secretary's Brief, Nos. 57 and 58, This Term, pp. 19-27.

Disclosure Act of 1959, 754 (hereinafter Leg. Hist.)); that it did not intend to "turn over to an arm of the State the responsibility for carrying on the internal governmental processes of voluntary associations" (Senate Report No. 1684 (1958), pp. 12-15, Leg. Hist. 702); that it did not intend to "dictate to the Union that their constitution and bylaws procedure shall be in conducting their elections" or to "turn the Congress of the United States into a constitutional convention and bylaws legislative body for all the unions of America," and that it did not intend to "be imposing upon the Unions our notions of what an election straitjacket should be" (105 Cong. Rec. 6741, Senate, April 25, 1959 (Sen. Morse), Leg. Hist. 805). These views were crystallized in the report of the Senate Labor Committee on S. 1555 (Senate Report No. 187, pp. 5-7, Leg. Hist. 118):

> "1. The committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization. Trade unions have made a commendable effort to correct internal abuses; hence the committee believes that only essential standards should be imposed by legislation. Moreover, in establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective bargaining agents.
>
> "2. Given the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully competent to regulate union affairs. The committee strongly opposes any attempt to prescribe detailed procedures and standards for the conduct of union business. Such paternalistic regulation would weaken rather than strengthen the labor movement; it would cross over into the area of trade union licensing and destroy union independence.
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> * * * *

"The bill reported by the Committee, while it carries out all the major recommendations of the Senate Select Committee, does so within a general philosophy of legislative restraint. . . ."

It was because of these statements and their concrete application in the actual provisions of Title IV that AFL-CIO President George Meany could, and did, appear before the House Committee considering this legislation to support the precursor of the present law, Title IV of S. 1555:

"3. Union elections: The next major subject dealt with in the various versions of the Kennedy bill and in the House bills patterned after S. 505 is union elections. These bills both lay down substantive rules for union elections and provide for their enforcement. Here too, the bills authorize a complaint to the Secretary of Labor and direct that he bring suit in a Federal district court if he finds probable cause to believe that a violation has occurred.

"Again, we believe that the bills here make a substantial contribution toward safeguarding union democracy. The supplying of a Government lawyer to represent the complainant is, as in the case of trusteeships, a substantial advantage to him. Further, the courts have not developed any set of legal principles applicable to union elections comparable to those they have devised for dealing with trusteeships. Thus the regulations of elections contained in these bills will sometimes fill a gap in existing law. In most cases, it is true, that gap is adequately supplied by the constitution of the union itself but not in all instances. . . ."

* * * *

Title IV of S. 1555, as passed by the Senate on April 25, 1959, is not substantially different from Title III of the original Kennedy bill, as reported by the Senate Labor and Public Welfare Committee. When I appeared before you earlier, I expressed our support of these provisions in general and in the first part of this

statement I reiterated our continued support of them." Hearings on H.R. 3540, etc. Before a Joint Subcommittee of the Committee on Education and Labor, House of Representatives, 86th Cong., 1st Sess. (1959), 1477-1478, 1494.

In short, as this Court stated in *Wirtz* v. *Bottle Blowers Assn.*, 389 U.S. 463, 470-471 (1968):

> "The legislative history shows that Congress weighed how best to legislate against revealed abuses in union elections without departing needlessly from its long-standing policy against unnecessary governmental intrusion into internal union affairs. The extensive and vigorous debate over Title IV manifested a conflict over the extent to which governmental intervention in this most crucial aspect of internal union affairs was necessary or desirable. In the end there emerged a 'general congressional policy to allow unions great latitude in resolving their own internal controversies. . . .'" *See also Musicians* v. *Wittstein*, 379 U.S. 171 (1964).

Where Congress was careful to preserve, the Secretary and the courts should not rush in to destroy.

The foregoing demonstrates to us that the Secretary's powers under the "reasonable qualification" provision must be circumscribed by the standard we propose in order to bring the administration of this provision into line with the overall purposes of Title IV. The broad sweep of authority the Secretary seeks in the instant case would be radically inconsistent with those purposes. This is especially clear since there is no consensus on the proper applicable governing rules in this area to guide him. For eligibility rules by their nature can be evaluated only when viewed in context as an organic outgrowth of a particular polity. *A priori* generalizations cannot provide criteria for determining the legitimacy of a particular rule in a particular setting, for the practice of constitutional democracy, and the framework of analysis which has been developed to

explain it, yield only the most tentative generalizations. And these generalizations are on too high a level of abstraction and are too remote from practical realities to be hardened successfully into rigid decisional rules. Thus unless the standard we propose is adopted, the Secretary and the courts will be left at large to make *ad hoc* judgments; in other words, they will assume the role of paternalistic regulators contrary to the intent of Congress.

The validity of our view is confirmed by a consideration of the generalizations offered by the Secretary. For the Secretary's brief demonstrates that he has been unable to articulate a coherent approach to Section 401(e) that would place any limits on his discretion. He places primary emphasis on the proposition that the conduct of "elections generally conducted in the United States" provide workable criteria for the application of Section 401(e) (Sec. Br. 14, 16, 17).[2] This proposition will not bear scrutiny. For example, the Constitution of the United States requires

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[2] The Secretary's attempt to find comfort in the general conduct of public elections in the United States in support of his contention that the Union's eligibility rule works an unacceptable prior restraint on voter choice, is clearly unavailing if the practical differences between public elections and an election in a local union are taken into account. In Local 6, as in most local unions, a member who satisfies the organization's written requirements and who can obtain the support of one or two fellow members, can appear on the ballot. Thus the union's written eligibility rules are the only barrier of any sort to a potential candidate. To the contrary, in public elections, as this Court has recognized, the normal method of access to a place on the ballot is by securing the nomination of one of the major parties, *see Smith* v. *Allwright*, 321 U.S. 649 (1941). Securing such a nomination is often an arduous, costly, and time-consuming process, and for precisely these reasons is closed to the great majority of citizens. Taking these factors into account, we submit that the restraints on voter choice are probably greater in public elections than in those conducted by Local 6.

candidates for the Presidency and the Congress to meet certain age, citizenship, and residency requirements. The Federalist Papers explain the rationale behind these qualifications in the following terms:

> "The qualifications proposed for senators as distinguished from those of representatives, consist in a more advanced age, and a longer period of citizenship. A senator must be thirty years of age at least; as a representative must be twenty-five. And the former must have been a citizen nine years; as seven years are required for the latter. The propriety of these distinctions is explained by the nature of the senatorial trust; which, requiring greater extent of information and stability of character requires at the same time, that the senators should have reached a period of life most likely to supply these advantages: and which, participating immediately in transactions with foreign nations, ought to be exercised by none who are not thoroughly weaned from the prepossessions and habits incident to foreign birth and education." *Federalist and Other Constitutional Papers,* Scott Foresman & Co., Chicago, 1898, Vol. I, No. LXII, p. 339.

It is generally agreed that sober and rational consideration went into the formulation of these Constitutional eligibility rules and that these rules have worked well as an integral part of this country's political structure. This does not mean, however, that a union could utilize the example of the Constitution by adopting a rule requiring its major executive officers to be thirty-five years of age and a member of the union for fourteen years, in the secure belief that the acknowledged wisdom of the founding fathers was accruing to it thereby. For its needs, structure, function, and purposes are far different from those of the entire society. And what is meet and proper for one group is not necessarily a soundly conceived solution for the problems of another.

While the structure of the Constitution does not provide easy answers to hard cases that arise under Section 401(e), it does refute the facile generalization, relied upon by the Secretary in his brief, that the "scheme of democracy in this country" is to place absolute "trust in the common sense and judgment of an informed electorate" (Sec. Br. 17). It demonstrates that eligibility rules designed to insure wise and experienced officials are entirely consistent with the constitutional democracy of the United States. Moreover, the Constitutional provisions we have been discussing also indicate the basic fallacy in the Secretary's suggestion (Sec. Br. 16) that the means employed to achieve a particular end must be "as narrow as possible" to be lawful. For any effort in this field is vulnerable under that standard. Thus, we do not believe that it is possible to construct a rational argument for the proposition that the eligibility rules in the Constitution are the narrowest possible means for achieving the ends sought there. Many Americans under thirty-five years of age are assuredly as wise as the majority of those who have reached that age. And there are surely many Americans who are not "natural born" who are fit to be President. Judgments in this area have to be prudential, and since this is so they cannot be demonstrated to be sound or unsound through a process of rigorous deductive logic.[3]

Thus two of the broad *a priori* generalizations offered by the Secretary—that public elections set the standard for union elections, and that the practice of democracy precludes eligibility rules designed to insure wise and experienced leaders—are in direct conflict. The third of his gen-

[3] It is for this reason that the portion of the Secretary's argument (Sec. Br. 18-21) which attempts to show that not every experienced member is allowed to run for office is beside the point. There are, of course, factual difficulties with this aspect of the Secretary's brief as well, as the Union points out in its brief.

eralizations—that the means used must be as narrow as possible—is patently unworkable. This of course puts the Secretary's analysis into serious question.

Once these generalizations are put to one side, as we have just shown they should be, the Secretary's position in practical terms comes down to the proposition that the concept of union democracy requires unions to allow any member who desires to run for office to appear on the ballot, even though he has not established qualifications to hold office by a period of service to the organization or a prior showing of interest in its affairs. He finds support for his position in the statement in Senate Report No. 187 that "individual members are fully competent to regulate union affairs" (Sec. Br. 17). That Report, read in its entirety, is instinct with the intention to allow union members to establish a form of constitutional democracy that is responsive to their needs, as long as the rules they adopt are enacted pursuant to proper democratic procedures. The sound reading of Senate Report No. 187 is that Congress intended to allow union members to exercise the basic right exercised by the members of any polity governed by a constitution: the right to set up basic inhibitions on future action in moments of calm deliberation when there is reason to believe that without those inhibitions the group may, in moments of stress and high emotion, take actions which would not be in its long-term interests and which might indeed threaten its survival. For the very *raison d'etre* of a constitution is to allow a group to safeguard itself against unsound, unwise, or improvident actions in the future. Depriving union members of this right of free men would not only substitute Secretarial and judicial control of unions for membership control contrary to the intent of Congress; it would also threaten the overall public interest.

There is no assurance that the Secretary will be invariably

correct in believing that the constitutional safeguards the membership has developed are unnecessary. The general public as well as the members will suffer should such safeguards, if they are prudent ones, be overturned. The Act is based on the conclusion that the powers of unions are such that the public has an interest in their internal affairs. It was this Court's recognition of the public interest which caused it to reject the argument that a second regularly scheduled election moots a case by the Secretary, *see Bottle Blowers Assn.*, 389 U.S. at 474-475. By the same token the public interest factor also undermines the Secretary's argument here, for its adoption would give the Secretary and the courts sweeping powers which would threaten the effectiveness of unions in their role as a collective bargaining agent. The skill, wisdom, and restraint of union officers in shaping the union's demands and in calling for the employment of the union's ultimate weapon—the strike—are of crucial importance to the economic health of the country.

The Secretary's appeal to the norms of the "labor community," while sounder than his appeal to the norms of our national electoral process, *see* pp. 19-21 *supra* is also fundamentally defective. The labor community may justly be viewed as many communities. Local 6 does not confront the same problems as does a small craft union of fifty members or a large industrial union whose many members work at a single plant. It is a large union in a large city, composed of members who pursue different callings in hundreds of establishments. The problems it faces, and its structural response to those problems, are a product of these unique attributes as well as of the fact that it is a labor union. The very response here in question—the creation of a broadly based assembly composed of unpaid rank and file members —is to our knowledge unusual. It cannot be pigeon-holed in the slot "prior office holding requirement" on the theory

that this will aid analysis. The type of prior office holding requirement found in Local 6 is simply radically different from others which require holding a paid office, a status which does to an extent identify the office holder with the administration. Once the rule is analyzed in its particularity, it may be most accurate to characterize it as a rule to require candidates to be familiar with and experienced in the workings of the union. So defined, it has many counterparts. For example, the constitutions of 15 international unions with a total membership of approximately 5,000,000 have meeting attendance requirements; 15 others, with a total membership of 4,500,000 have a two- to three-year membership requirement, *see* United States Department of Labor, Union Constitutions and the Election of Local Union Officers, 41, 49 (1965). Both of these rules, as well as Local 6's rule, fall within the category we have just stated. Indeed it is Local 6's complex character and large size which makes it impractical for it to employ those means to that end. Thus, the rule here does or does not depart from a norm, depending on the point from which the analysis begins. The foregoing indicates the difficulties of determining with any precision what the norms of the labor community are, difficulties the Secretary does not deal with at all. But it does more; it indicates that the fact that a rule is unusual does not prove that it is unreasonable or in conflict with democratic principles. For example, the State of Nebraska has the only unicameral legislature in this country; yet we would assume that Nebraska is not to be deemed undemocratic on that showing alone. Thus the defect in the Secretary's argument is one pointed out with consummate skill in the dissenting opinion of Mr. Justice Brandeis in *New State Ice Co.* v. *Liebmann*, 285 U.S. 262, 308 (1932), an opinion that has long since carried the day in Fourteenth Amendment litigation and in the wider area of public opinion as well:

> "To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. This Court has the power to prevent an experiment. We may strike down the statute which embodies it on the ground that, in our opinion, the measure is arbitrary, capricious or unreasonable. We have power to do this, because the due process clause has been held by the Court applicable to matters of substantive laws as well as to matters of procedure. But in the exercise of this high power, we must be ever on our guard, lest we erect our prejudices into legal principles. If we would guide by the light of reason, we must let our minds be bold."

Finally, the Secretary argues (Sec. Br. 21-24) that Local 6's eligibility rule is unreasonable because it "provides a facile method for the Administration party to maintain control." The Secretary's argument disregards the distinction between the consequences of the rule itself and the consequences of the preferences of the Union's members in elections for the Assembly. The rule simply requires prior membership in the Assembly or the old Shop Delegates Council in order to run for office; and there is no contention that the prerequisite for running for these bodies, one year's good standing, is unreasonable. Thus the rule is not the reason that most of those eligible to run for executive office have a past identification with the Administration party. This result has been brought about by the fact that the membership has consistently preferred the candidates of that party. The rule itself is perfectly consistent with the attainment of any conceivable political division in the Assembly. It is neutral in this regard. Of course it can be argued that at this historical point in time the rule works

to the disadvantage of a certain group. But this is always true of any rule. To accept this argument is to sanction anarchy.

Thus the Court of Appeals was not suggesting that the rule was reasonable because an opposition could rise to power by a two-stage process (Sec. Br. 23). It simply recognized that there has been a continuous opportunity for any interested member who opposed the incumbents to put himself in a position to challenge them. To the extent that this has failed to occur it is not because of unfair rules of the game but because of a failure of the outs to appeal to the electorate. Consistent with a regard for logic, it is simply impermissable to proceed from the fact that a party has achieved hegemony to the assertion that this proves that the rules unfairly favor that party. For example, the fact that the Republican Party controlled the White House from the Civil War until 1932, and the statehouse in Vermont for approximately one hundred years, and that the Democratic Party controlled the White House from 1932 until 1952, and was as completely dominant in the South for one hundred years as were the Republicans in Vermont, does not prove that the elections in this country have not been democratic.

The essential fallacy of the Secretary's position is his failure to appreciate the fact that in-groups cannot pass constitutional rules by themselves. It requires at least 51% of the membership or 51% of their freely elected representatives to do so. And, as the court below noted, the membership has a continuing opportunity to change those rules by the same democratic processes. This has always been true in practice in the great majority of unions; it is now true by the force of federal law. It is for this reason that unreasonable qualifications on eligibility are bound to be few and far between. For the mem-

bers of a union are unlikely to pass rules which may disqualify them in the future without good and sufficient reasons for doing so. The recognition of this point is absolutely critical; for the Secretary's brief (Sec. Br. 18, 21-24), to bolster its argument, continuously attempts to side-step it with unproved allegations that the eligibility rule in question is an attempt to "stifle dissent" and to deprive the members of the right to pass "judgment . . . themselves." The point of the matter is that the membership has passed judgment; they passed the rule the Secretary seeks to overturn.

To this point, we have met the Secretary on the grounds he has chosen. But we must note that those grounds do not appear to be the ones upon which administrative decisions are made. So far as we can determine, they are simply lines of attack evolved for the purposes of this litigation to defend a decision originally based on the bare proposition, now evidently discarded (Sec. Br. 21), that any rule which disqualifies a substantial majority of the membership is presumptively illegal. Thus the Secretary's arguments must stand or fall on their merits alone, they cannot be defended by an appeal to administrative expertise. Our assertion is based on the Secretary's Statement of General Policy and Interpretation under Section 401(e). This Statement, which is the only authoritative expression of the Secretary's policy enunciated by him, reads as follows, 28 F.R. 14380 (1963), BNA Labor Relations Expediter 7135:

> "(b) The question of whether a qualification is reasonable is a matter which is not susceptible to precise definition and in the last analysis will be determined by the courts. Under certain circumstances a prerequisite for such candidacy may on its face appear to be reasonable, but this would not be controlling if, as a matter of fact, the effect of its application would be unreason-

able and inharmonious with the intent of the Act's election provisions. For example, a requirement that to be eligible to be a candidate for office an individual must have been a 'member in good standing' for a prescribed period of time, such as two or three years, would not be, in many instances, an unreasonable qualification. However, should the actual effect of such qualification in a particular case be to disqualify from holding office all but a handful of the labor organization's members, its reasonableness would be subject to serious question."

This "effect" test is clearly unsound. The number or percentage of members eligible to appear on the ballot is not a valid indication of whether a rule is reasonable or not. This test makes it all but impossible for unions to evolve eligibility rules which they can be reasonably confident will satisfy the law. For example, let us suppose that an international union decides that any member can run for local office who attends three of the union's monthly meetings during the year prior to the election. It seems clear that on its face this is a reasonable rule. Certainly, the minimum that Congress intended by Section 401(e) is that some qualifications over and above paid-up membership may be imposed. And the rule we suggest is adapted toward what we regard as a clearly legitimate end, insuring that members have a basic familiarity with the union's affairs; and it is a rational means of achieving that end which is not unduly burdensome in any way. Let us suppose further that in one local only 10% of the members attend three meetings, while in another local 65% do so. And let us suppose again that there are no structural differences between the locals and no evidence of misconduct by the officers of the first local. The "effect" test would indicate that the rule is illegal as applied to the first local and legal as applied to the other. In addition, the "effect" test precludes experimentation with new types of eligibility rules. Espe-

cially where the effect of the rule depends upon the degree of active interest in the union by the membership, no one can be certain what that effect will be. The only thing that is clear is that it is bound to vary from election to election. This means that the Secretary's position serves to undercut responsible internal union decision making. This is in direct opposition to the overall purposes of the Act.

In conclusion, we wish to make it clear that we do not argue that every eligibility rule must be allowed to pass muster. We argue simply that the courts should overturn only those rules which are arbitrary or lack a logical connection to a legitimate end. Thus, our position is that the courts and the Secretary should normally defer to the decisions of the membership in order to assure that the regulation of eligibility rules is not allowed to work at cross purposes with Congress' overriding intent to limit external interference in union affairs.

II

IN A TITLE IV LAWSUIT THE SECRETARY DOES NOT HAVE THE POWER TO RAISE AND THE DISTRICT COURTS DO NOT HAVE THE JURISDICTION TO CONSIDER ISSUES WHICH THE UNION DID NOT HAVE A FAIR OPPORTUNITY TO CONSIDER IN CONNECTION WITH AN INTERNAL UNION APPEAL

In *Wirtz* v. *Laborers' Union*, 389 U.S. 477 (1968), this Court considered for the first time the meaning of Sections 402(a) and 402(b) of the Act, which provide:

> "Sec. 402. (a) A member of a labor organization—
> (1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization."

The essence of the AFL-CIO's position in its brief filed in that case was that the Secretary has the power to raise and the lower courts have the jurisdiction to consider only those issues which "the union had a fair opportunity to consider in connection with its consideration of [a member's] internal appeal . . . The touchstone is the complaining member's intent as revealed by a liberal and sympathetic reading of his internal appeal" (AFL-CIO Brief in Nos. 57 & 58, This Term, p. 28). We argued further that because of the equities which favor officers whose elections

have not been challenged, this general standard should be applied so as to preclude the Secretary from seeking to invalidate the elections of all the officers who were elected at the same time on the basis of an internal complaint which alleged a defect in the election of one (*Id.* at 27-28). In *Laborers' Union*, the Secretary, as he does here, argued that Sections 402(a) and (b) should be viewed as entirely separate and distinct. His position was, and is, that if he receives a complaint from a union member who has filed an internal complaint, he has *carte blanche* to introduce any issue he may choose into Title IV court litigation without regard to whether or not that issue was raised by a complaint filed with the union (Secretary's Br. in Nos. 57 & 58, This Term, pp. 44-49; Secretary's Br. in No. 891, This Term, pp. 30-34). On the facts of this case the Secretary is forced to make this argument. For the new matters he sought to raise were completely unrelated to the matter raised by the union members internally (App. 18-19). Thus it is plain that the Secretary can prevail here only if the standard he proposes is accepted. On the basis of these arguments this Court held (389 U.S. at 481-482):

> "On the facts of this case we think the Secretary is entitled to maintain his action challenging the June 8 general election because respondent union had fair notice from the violation charged by Dial in his protest of the runoff election that the same unlawful conduct also occurred at the earlier election. We therefore need not consider and intimate no view on the merits of the Secretary's argument that a member's protest triggers a § 402 enforcement action in which the Secretary would be permitted to file suit challenging any violation of § 401 discovered in his investigation of the member's complaint."

We think it fair to say that this holding closely tracks the AFL-CIO's main position on the proper governing standard while rejecting the application of that standard

which we proposed. Certainly, we do not see how this Court could have been more explicit in stating that its decision was not to be taken as an endorsement of the Secretary's basic argument. Thus, we submit that the Secretary is in error when he suggests (Sec. Br. 31) that the Court's rationale in *Laborers' Union* requires acceptance of his position here. That rationale was (*Id.* at 482-483, 484):

> "It is most improbable that Congress deliberately settled exclusive enforcement jurisdiction on the Secretary and granted him broad investigative powers to discharge his responsibilities, yet intended the shape of the enforcement action to be immutably fixed by the artfulness of a layman's complaint which often must be based on incomplete information. The expertise and resources of the Labor Department were surely meant to have a broader play. Second, so to constrict the Secretary would be inconsistent with his vital role, which we emphasize today in *Wirtz* v. *Local 153, supra,* in protecting the public interest bound up in Title IV. The Act was not designed merely to protect the right of a union member to run for a particular union office in a particular election. Title IV's special function in furthering the general goals of the LMRDA is to insure free and democratic union elections, the regulations of the union electoral process enacted in the Title having been regarded as necessary protections of the public interest as well as of the rights and interest of union members.
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> "It is true that the exhaustion requirements was regarded by Congress as critical to the statute's objective of fostering union self-government. By channeling members through the internal appellate processes, Congress hoped to accustom members to utilizing the remedies made available within their own organization; at the same time, however, unions were expected to provide responsible and responsive procedures for investigating and redressing members' election grievances. These intertwined objectives are not disserved

> but furthered by permitting the Secretary to include in his complaint at least any § 401 violation he has discovered which the union had a fair opportunity to consider and redress in connection with a member's initial complaint."

Thus, the Court recognized that Sections 402(a) and 402(b) harmonize two competing interests: the efficient utilization of the enforcement powers granted to the Secretary and the preservation of union appellate procedures which have been incorporated into the Act's remedial scheme. The "fair opportunity" test, which is the governing standard we propose, and which has won limited approval from this Court in *Laborers' Union,* is consistent with the effectuation of both aspects of Congress's intent. Indeed, it is the only standard which fulfills that role. The "trigger" theory advanced by the Secretary, on the other hand, is completely unfaithful to that intent for it exalts the Secretary's powers to such an extent that the competing interest in the preservation of union internal appellate procedures is rendered trivial.

Before turning to a consideration of the relevant legislative history and an elaboration of our argument, we wish to make one further point about the decision in *Laborers' Union.* The Secretary argues (Sec. Br. 30-31) that this point need not be reached if he succeeds in his attempt to have the Court overturn the adverse rulings he has suffered in his challenge to the Union's eligibility rule. The short answer to this position has been stated by this Court (389 U.S. at 480):

> "The merits of this question have been fully briefed and argued in this Court and the underlying issue of statutory construction has already been the subject of several and conflicting rulings by various federal courts. The interests of judicial economy are therefore best served if we proceed to resolve this important question now."

1. Sections 402(a) and 402(b) of the Act are the direct outgrowth of Sections 302(a) and 302(b) of S. 3974 (85th Cong., 2nd Sess.) as it was reported by the Senate Labor Committee and as it passed the Senate on June 17, 1958; and of Sections 302(a) and 302(b) of S. 1555 (86th Cong., 1st Sess.) as it was reported by that Committee and as it passed the Senate on April 25, 1959. These bills in turn stemmed from Sections 4(a) and 4(b) of S. 3751 (85th Cong., 2nd Sess.) as it was introduced by Senator Kennedy on May 5, 1958. The original Landrum-Griffin Bill, H.R. 8342 (86th Cong., 1st Sess.) as it passed the House, as well as the earlier version of H.R. 8342 which was reported out of Committee, contained a different procedure for judicial enforcement, one providing for direct court actions by union members rather than suits by the Government.[4] The Conference Committee adopted in its entirety and without change, the language of Sections 302(a) and 302(b) of S. 1555, and the Conference Committee's version of the legislation in this regard was enacted into law.

After S. 3974 was reported out of Committee in 1958, there were no changes of substance, so far as the issue presented here is concerned, in the language of what was

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[4] H. R. 8342 as it passed the House provided:

"Sec. 402(a) A member of a labor organization—

(1) who is aggrieved by any violation of section 401, and

(2) who (A) has exhausted the reasonable remedies available under the constitution and bylaws of such organizations and of any national or international labor organization with which such organization is affiliated, or (B) has diligently pursued such available remedies without receiving a final decision within six calendar months after their being invoked, may bring a civil action against such labor organization in any district court of the United States for the district having jurisdiction of such labor organization to prevent and restrain such violation and for such other relief as may be appropriate, including the holding of a new election under the supervision of the Secretary and in accordance with the provisions of this title. Where an election has already been held at the

to become Sections 402(a) and 402(b) of the Act.[5] While the enforcement provisions of Title IV did undergo some change during Congress's deliberations, the basic structure of the exhaustion of internal remedies requirement was set from the inception of the process that led to the final Act. Thus it is clear that the primary sources for the proper approach to the interrelationship between these Sections are the relevant statements of Senator Kennedy, the original sponsor of the measure, and the majority reports of the Senate Labor Committee on S. 3974 and S. 1555. In his remarks on the floor explaining S. 3751, Senator Kennedy stated:

"At the present time, if a union member feels that his rights have been jeopardized in an election, he is

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time such action is brought, such election shall be presumed valid pending a final decision thereof, as hereinafter provided, and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(b) For the purposes of this section, district courts of the United States shall be deemed to have jurisdiction of a labor organization in the district in which such labor organization maintains its principal office. The court in such action may, in its discretion, in addition to any judgment awarded to the plaintiff, or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action." Leg. Hist. 828.

[5] The following are the only changes made after S. 3974 was reported out of committee. First, S. 3974 required the complaining member to have exhausted internal remedies for four months rather than three, and required the Secretary to bring suit within 30 days rather than 60. Second, the phrase "pertaining to the election and removal of officers" in the first parenthesis in the text of Section 402(a) was not included in Section 302(a) of S. 3974. Third, the provisions relating to a procedure for removing officers, and for court preservation of assets, both of which are found in Section 302(b) of S. 1555 as it passed the Senate and in Section 402(b) of the Act, were not included in Section 302(b) of S. 3974. Fourth, only Section 302(b) of S. 1555 contained a provision relating to service of process.

able to appeal to a State court. I have done some research into that matter, and I believe we have found that only one local union election in recent years has been set aside as a result of an attempt by a member to obtain his rights by appealing to a State court. The classic example of the difficulties involved is that of the 13 members of the teamsters union, who, after weeks and months of litigation, have had to accept a settlement which is highly unsatisfactory in regard to the holding of an election; but the lawyer for the rank-and-file members has submitted a bill for $300,000. So that is, I believe, the classic example of the fact that the right of the members to appeal to a State court is useless.

"In the bill we provide the right to appeal to the Secretary of Labor, whenever a member believes that his rights, as provided in the bill in the case of an election, have been denied to him. Then the Secretary of Labor in effect becomes the union member's lawyer. Such a provision is infinitely stronger than any provision now in effect." 105 Cong. Rec. 10947-10948, Senate, June 12, 1958, Leg. Hist. 1093.

In addition, the majority reports of the Senate Labor Committee also contain a very explicit explanation of the purpose of the exhaustion of internal remedies requirement contained in Sections 402(a) and 402(b). Thus, Senate Report No. 1684, pp. 12-15, Leg. Hist. 701 states:

"The foregoing provisions are to be enforced by the Secretary of Labor, upon complaint of any union member, through court action similar to the proceedings to lift improper trusteeships. In filing a complaint the member must show that he has pursued any remedies available to him within the union and any parent body in a timely manner. This rule preserves a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections. If the member is denied relief by the union or can obtain no decision from the

union one way or the other within 4 months, he may complaint to the Secretary."

* * * * * *

"The committee gave careful study to various proposals providing for the conduct of union elections by the National Labor Relations Board upon the request of a small percentage of the members. The committeee rejected this approach for two reasons.

"One fundamental objection is that these proposals turn over to an arm of the State the responsibility for carrying on the internal governmental processes of voluntary associations without any showing that the union officers and members are incompetent or corrupt. Such a measure does not promote freedom or democracy. It reduces self-government. It denies the private responsibility and self-determination which lie at the heart of a voluntary association."[4] *See also* Senate Report No. 187, 86th Cong., 1st Sess., pp. 5-7, Leg. Hist. 118 (quoted on pp. 16-17 *supra*).[6]

Two final points should be noted in order to complete the legislative picture. First, while the approach taken in the original Landrum-Griffin Bill, as it passed the House, was different from that taken in the Senate, that bill also contained a requirement of exhaustion of internal remedies. Thus as to this matter the dominant factions in both Houses of Congress were of one mind, *see* n. 4, pp. 34-35, *supra*, and

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[6] The first portion of this statement appears again in Senate Report No. 187, pp. 19-22, Leg. Hist. 778. With the exception of the above-noted statements, the framers of Sections 402(a) and 402(b) limited themselves to analyses of the bill which track its language and are thus of little help in the resolution of the issue presented here. This is also true of the remarks made by the House supporters of the Senate approach. *See e.g.*, 105 Cong. Record 7953-4, Senate, May 5, 1958, Sen. Kennedy, Leg. Hist. 699; Senate Report No. 187, pp. 46-50, Leg. Hist. 780; 105 Cong. Record 7024-5, Senate, April 29, 1959, Sen. Kennedy, Leg. Hist. 808; 105 Daily Cong. Record A-6573, Appendix July 29, 1959, Rep. Brademas, Leg. Hist. 815; House Conference Report 1147, 86th Cong., 2d Sess., pp. 33-35, Leg. Hist. 835.

105 Cong. Record 15707-15708, House, August 12, 1959, Leg. Hist. 823. Second the inclusion and retention of the exhaustion of internal remedies requirement was a conscious choice made with full recognition of the consequences it entailed. For a minority of Senators, led by Senator Goldwater, argued with vigor that the provision would hinder the effective enforcement of the statute, *see e.g.*, 105 Cong. Record 16489, Senate, August 20, 1959, Sen. Goldwater, Leg. Hist. 830; Senate Report No. 187, pp. 103-104, Minority Views, Leg. Hist. 783.

2. The purport of this legislative history is clear. The supporters of Title IV in both Houses, and especially in the Senate where this portion of the Act was written, recognized that the public interest in union democracy, as they viewed it, would be secured most satisfactorily by insuring that union members who were dissatisfied with some aspect of their organization's election procedures, and who were unable to obtain internal relief, would receive government assistance in pressing their case in court. As a corollary, the legislators believed that in the absence of any expression of membership dissatisfaction to the union itself, the union's members should be free, without government direction, to run their own elections. The Congressional conception of the public interest rests on three considerations: first, that there is every reason to trust in the probity, judgment and democratic instincts of union members; second, that the vitality of union democracy would be dissipated if the autonomy of the organization were not respected, and if its internal procedures were bypassed and permitted to atrophy; third, that union democracy would be subverted if the Government were given discretion to intermeddle in internal union matters as to which no member had a complaint. In short Congress recognized that a limitation on the coercive powers of the Government was

an integral component of its overall conception of the public interest in union democracy.

Congress expressed this conception of the public interest by passing legislation which set up a system that balances union autonomy and government regulation. This end was achieved by a legislative guarantee that unions would be responsive to their membership. This guarantee was redeemed by authorizing the Secretary to use his coercive powers for the limited purpose of helping union members achieve the type of organization they desire, rather than by authorizing him to force his views of how the organization should be governed on the membership without regard to their desires. *See, in general,* Cox, *The Role of Law in Preserving Union Democracy,* 72 Harv. L. Rev. 609 (1959); Mitchell, *Safeguards for Union Democracy* in Slovenko, Ed., Symposium on the Labor-Management Reporting and Disclosure Act of 1959, 135 (1961).

The foregoing, we submit, is the only rational explanation for the inclusion of Section 402(a) in the Act. The requirement that only complaints by union members may be used as a basis for a court suit, and the further requirement that only complaints which have been tendered to the union are a proper predicate for coercive action by the Secretary, make sense only if it is recognized that the enforcement mechanism of Title IV is the product of the desire, first, to promote the responsibility of the union to its members and equally of the members to their organization, and second, to protect union self-government and membership sovereignty from the overweening weight of an external government bureaucracy.

The entire remedial scheme is reduced to a logical and practical absurdity if the Secretary is held to have the power to bring a suit based on matters not raised by union members in their internal complaint. Suppose, for example,

that a union has an eligibility rule which the membership wishes to retain and which the Secretary believes is unsound and should be changed. The union holds an election in 1963 as to which no internal complaint is filed but as to which a direct appeal to the Secretary is made alleging that opposition candidates were threatened with reprisals. No court action is taken because there was no exhaustion of remedies. In 1966, the union holds its next regularly scheduled election and it receives one complaint alleging that the ballot box was stuffed. It investigates and rejects the appeal as unwarranted. The complainant goes to the Secretary who investigates and concludes that the complaint is without substance and who then files a suit challenging the eligibility requirement. Allowing the Secretary to bring suit in the second instance, even though he is plainly barred in the first, would reduce the exhaustion of remedies requirement to a lifeless formality devoid of any actuating principle which explains and justifies its inclusion in the Act. It would also run counter to the interest in having all defects in an election raised as expeditiously as possible so that they can be considered when the evidence is fresh, and in order to insure that there will be a complete record on which to decide whether to consider the election proper and final or so improper or vulnerable to attack at a higher level that it should be considered a nullity. On the other hand, as we have just attempted to show, if the Secretary is barred from proceeding in both instances, as Congress intended, the compelling logic of the exhaustion of remedies' requirement is preserved.

The position we argue for is strengthened further when the import of Section 601 of the Act is taken into account. For Section 601 has been construed to afford the Secretary broad visitatorial powers, *see e.g. Wirtz* v. *Local 191, Teamsters*, 321 F.2d 455 (C.A. 2nd Cir., 1964). But those visitatorial powers are not accompanied by a grant of

coercive powers. Thus, Congress was not of the view that the Secretary should have the right to go into court whenever he uncoveres conduct he believes to be illegal. Instances where the Secretary believes that there is an uncorrected wrong, but cannot secure court relief, are a natural product of the overall balance between union autonomy and government power that Congress struck in this area. There are sound reasons for this distribution of power when the Secretary's persuasive role in administering the Act as opposed to his coercive role, is taken into account. For, if the Secretary uncovers election violations which were not discovered by the membership, or to which the members have made no objection, he can inform them and the general public of his findings. The possibility of disclosure, as Congress recognized, has a strong prophylactic effect on union action. Moreover, if an investigation indicates fraud or other wrong-doing, disclosure could lead to membership action to remove the officers responsible, *see* Section 401(h), or to criminal proceedings, *see* Section 607. In this regard, it should not be forgotten that the overall title of this act is "The Labor-Management Reporting and Disclosure Act of 1959" and that the title is the reflection of the Congressional belief that disclosure in and of itself is a powerful weapon. As the District of Columbia Circuit noted:

> "The public disclosure functions of Section 601 have a certain similarity of purpose with the disclosure concepts of the Securities and Exchange Act; to a degree each has as its purpose ventilation of facts in which the public at large, as well as a particular segment—here union members—have a genuine interest. A labor union is not a private enterprise. Congress seems to have thought that reporting and disclosure would serve a prophylactic function, deterring some of the corrupt practices and acts of untrustworthiness on the part of union officers which Congress had found prevalent, and would enable union members to govern

their organizations more intelligently." *International Brotherhood of Teamsters* v. *Wirtz*, 346 F.2d 827, 831 (C.A. D.C. Cir., 1965).

There are two types of cases in which the Secretary has attempted to litigate issues not raised by any union member. The first are those, of which the instant case is an example, in which allegations are raised by the Secretary concerning conduct which is said to violate the applicable union constitution or the provisions of the Act. The second are those in which the Secretary challenges provisions of the union's constitution and bylaws as unlawful, *see Locals 545, etc., Operating Engineers* v. *Wirtz*, 381 F.2d 448 (C.A. 2nd Cir., 1967).

There can be no doubt that the "conduct" cases are precisely governed by the exact words of Senate Report No. 1684, p. 12, Leg. Hist. 701 that "[the] rule [requiring exhaustion of remedies] preserves a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections." A suit based on conduct, which allegedly violates a union constitution, or the safeguards established by the Act, and which was not raised by a union member in an internal complaint, plainly runs counter to this statement of Congressional intent. The cases challenging provisions of a union's constitution have focused on Section 401(e) which permits unions to set reasonable qualifications on the right to run for office. The very purpose of allowing unions to set reasonable qualifications is to enable each organization to set up a system of self-government responsive to its needs, *see* pp. 10-29 *supra*. Such a challenge, which does not lend itself to any simple or precise answer, may, therefore, bring into question the most deep-seated assumptions upon which the organization is built, and it may call for a sensitive balancing of considerations of a political nature.

Moreover, many internal appeals do not raise straightforward questions of statutory law. They often raise questions which require an interpretation of the union's constitution, and are usually grounded in particular facts, and in the practices, usages, and traditions of the group *see Laborers' Union,* 389 U.S. at 480-481. As to these matters the union is the logical agency to which to look for expertise. Thus, as in the conduct cases, the officers of the union must, before the Government's coercive powers are invoked, be allowed the first opportunity to assess the validity of the rule in light of the objections of those members who consider themselves aggrieved by it. Prior consideration of the rule may obviate the need for litigation, or, if litigation proves necessary, may prove illuminating to the courts. In addition, given the nature of the judgment that must be made when a rule is challenged as unreasonable, surely there is no other area of the Act as to which it is as necessary to ascertain the membership's desires. The members know the organization best and if they have all reached the conclusion that they wish to abide by a certain set of rules, the Congressional policy, which is to insure that the organization is responsive to their desires, is being fulfilled.

In the leading case of *United States* v. *L. A. Tucker Truck Lines,* 344 U.S. 33, 36-37 (1952), Mr. Justice Jackson stated:

> "We have recognized in more than a few decisions and Congress has recognized in more than a few statutes, that orderly procedure and good administration require that objections to the proceedings of an administrative agency be made while it has opportunity for correction in order to raise issues reviewable by the courts. It is urged in this case that the Commission had a predetermined policy on this subject which would have required it to overrule the objection if made. While this may well be true, the Commission

> is obliged to deal with a large number of like cases. Repetition of the objection in them might lead to a change of policy, or, if it did not, the Commission would at least be put on notice of the accumulating risk of wholesale reversals being incurred by its persistence. Simple fairness to those who are engaged in the tasks of administration, and to litigants, requires as a general rule that courts should not topple over administrative decisions unless the administrative body not only has erred but has erred against objection made at the time appropriate under its practice." (footnotes omitted)

We suggest that in Title IV Congress placed its trust in the union as the initial tribunal for deciding election appeals, since it can offer speedy relief after hearing from all the interested parties, and since the questions which will normally be raised in election contests are those as to which it has expertise, *cf. United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960). Thus the function of the exhaustion of remedies requirement is analogous to the function of the doctrine stated in *Tucker*. It insures that adequate respect is given to a Congressional allocation of power by requiring union members not to bypass the initial deciding body Congress has chosen to hear their complaints.

The Secretary's main argument in support of his position (Sec. Br. 31, 33) is that the "trigger" theory can be brought into conformity with the complex purposes of the Act by allowing him to substitute a notification to the union prior to instituting suit, which advises it that he is going to proceed on matters which have not been raised by any member, for the Congressional requirement of exhaustion of internal remedies by union members. This argument is untenable. The purpose of Section 402(a) is to foster and protect the public interest in responsible union self-government "by channeling members through

the union's internal processes . . . [thereby] accustom[ing] members to utilizing the remedies made available within their organization." *Laborers' Union,* 389 U.S. at 484. And government by the Secretary in the form of a threat to take coercive action by bringing suit which would subject the union to great expense, unless his fiat is obeyed, rather than through a process of interaction between the union and its members, may be called any of several things but not free and democratic self-government. For this Court has often recognized that actions taken under a threat of litigation are not products of free will, *see e.g. Bantam Books* v. *Sullivan,* 372 U.S. 58, 66-67 (1963). Putting labels to one side, it is perfectly plain that the Secretary's position serves to cripple internal union remedies, and to tend to render them impotent, rather than to strengthen them as Congress intended. It is also clear that this argument if accepted would prove far too much. Since Section 601, as it has been construed, makes it plain that there is no requirement that the Secretary limit his investigations to elections about which there has been a complaint, the Secretary's position, if accepted, would sanction a suit under Section 402(b) to set aside a union election about which no member had complained, as long as the Secretary informs the union that he believes that the election was unlawful prior to filing his suit. The short of it is that the Secretary's approach is to seek to have the limitations on government power contained in Section 402(b) read out of the Act.

The inescapable fact of the matter is that the argument by the Secretary which we have been considering suggests: an inability to understand the rudiments of the concept of free and democratic self-government; an overriding distrust of internal union processes; and a desire to arrogate to himself the maximum in coercive powers. His position is thus completely at odds with Con-

gressional intent. In light of the points we have just made we can find no other explanation for his rhetorical question (Sec. Br. 33): "What difference can it make whether [the] occasion [for internal correction] was the processing of the union member's protest or another time, prior to suit?" Indeed the Secretary's suggestion (Sec. Br. 33-34) that a failure to adopt the "trigger" theory would put a "premium upon union suppression of facts," provides additional support for our assertion that he has failed to understand the policies behind Sections 402(a) and 402(b). For if Congress had been concerned with this remote possibility, it would not have placed the exhaustion requirement in the Act. Moreover, if and when the Secretary is able to prove that a union has attempted to perpetrate such a fraud on himself and the courts, we are confident that the latter would be able to provide relief, *cf. Holmburg v. Armbrecht* 327 U.S. 392, 395-397 (1946). The possibility of suppression of facts is the major policy justification the Secretary advances for his position. Yet in the past he has challenged allegedly illegal union rules, whose existence and terms are matters of public record, even though no member has complained about them. This policy justification provides no support for the institution of such cases. The Secretary's reliance upon it is thus doubly unsound since it is too narrow to justify the rule of law he seeks to have established.

The Secretary next argues (Sec. Br. 31-32, 45) that the language of Section 402(b) ("The Secretary shall investigate such complaint and if he finds probable cause to believe that a violation of this Title has occurred . . . he shall . . . bring a civil action . . .") lends some support to his view that a lawsuit brought under that Section may be based on issues other than those raised by union members. If Section 402(b) began by stating, "The Secretary shall

investigate *in its entirety* any election about which he has received a complaint . . .," we could see some logic in the Secretary's argument that the use of the words "if he finds . . . a violation of this Title has occurred . . . he shall . . . bring a civil action" advances his cause. But that is not the way the legislation reads. Instead, Section 402(b) opens by referring to the member's complaint and by limiting the ensuing investigation and resulting suit to the subject matter of that complaint. Once this point is taken into account, the actual import of Section 402(b), read in its entirety, supports our position rather than the Secretary's, for the reference to the member's complaint is an explicit recognition that Sections 402(a) and 402(b) are related to each other as a single interconnected entity. Since the Secretary's powers are explicitly tied to the member's complaint at the start of Section 402(b), it is most logical to conclude that Congress realized that it was unnecessary, in order to manifest its will, to use the redundant "such violation" rather than "a violation."

The operative language of what was to become Sections 402(a) and 402(b) had hardened into final form as Sections 302(a) and 302(b) of S. 3974 (85th Cong., 2nd Sess.), *see* pp. 34-35, *supra*. Nevertheless, the Secretary's linguistic argument relies on the language of Section (b) of S. 1002 (86th Cong., 1st Sess.), a bill that was not even being considered at the relevant time, to show that the use of the phrase, "a violation" was a conscious rejection of the narrower phrase, "such violation." The temporal difficulties with this position are apparent and these difficulties are plainly fatal once it is recognized that S. 1002 was not in any sense an attempt to amend or perfect S. 3974. It was a complex bill which contained a procedure for regulating elections completely different from that embodied in S. 3974, and in the Act, and it proceeded from far dif-

ferent premises from those shared by the Senators who drafted the final legislation. Clearly, therefore, it is an unlikely source from which to expect enlightenment on the intentions of those who actually conceived the Act.

Contrary to the Secretary (Sec. Br. 32-33), we submit that our position is fully consistent with this Court's explanation of the policy considerations which caused it to reject the argument that the Secretary should be limited "to the specifics of the union member's complaint," *see Laborers' Union*, 389, U.S. at 482-483. The role of the Secretary under the "fair opportunity" test we propose allows him great scope to utilize his "broad investigative powers," his "expertise and the resources of the Labor Department," and to "protect the public interest." Under our view the Secretary is still charged with the responsibility of achieving voluntary compliance; of investigating and, if necessary, prosecuting any matter that the internal complaint of a member may fairly be said to have raised; of drawing together membership complaints about an election, if there are more than one, and welding them into a single coherent lawsuit; of giving form and direction to the statute by issuing rules and regulations which serve to guide union officers and union members; of skillfully developing and arguing before the courts the matters raised by union members; and of investigating union members' unproved or half-proved allegations to see if they have substance and should be pressed to vindicate the public interest in union democracy or should be dismissed short of court; thereby saving the union from the expense of defending frivolous and vexatious litigation. Moreover, he does all this at the public's expense rather than at the expense of union members who might not be able to afford to do it for themselves. Plainly, the diligent and sensitive effectuation of all these tasks is a sufficient responsibility for any Government official.

But as this Court recognized in *Laborers' Union*, 389 U.S. at 484, the Congressional conception of the public interest in union democracy was multifaceted. It was not an expression of a single-minded belief in the efficacy of coercive regulation through lawsuits brought by the Secretary. That aspect of the Act's enforcement machinery must be harmonized with other interests that were also valued by Congress including union autonomy, membership responsibility and the preservation of internal union appellate procedures. To extend the Secretary's powers to their furthest possible reach is to destroy these other equally valid interests. On this basis, we submit that the proper balance can only be struck by limiting the issues that the Secretary can raise in a Title IV court action to those which the union had a fair opportunity to consider in connection with a member's internal complaint.[7]

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[7] The Secretary's argument as to the proper interpretation of Section 402(c) follows the same lines as his argument on Sections 402(a) and 402(b). It is an attempt to destroy the balance struck by Congress in order to ease the restraints the Act puts upon him in his role as a prosecutor of Title IV lawsuits. We are in full agreement with the Union's argument which demonstrates that the Secretary's position is absolutely incompatible with the fact that the Act states that an election shall be set aside only "if upon a *preponderance of the evidence* . . . the court finds . . . that the violation . . . may have affected the outcome of [the] election." (Emphasis added.) Surely, in light of the italicized language, a showing that a willing candidate has been disqualified is at most sufficient only to make out a *prima facie* case and does not create an irrebuttable presumption favoring the Secretary. The reasoning behind this proposition is set out in detail in the Union's brief. Moreover, we have already addressed ourselves to this issue in *Bottle Blowers Assn.*, *see* the AFL-CIO Brief in Nos. 57 & 58, This Term, pp. 42-47, to which we respectfully invite the Court's attention. Since the Court did not reach this issue in *Bottle Blowers Assn.*, 389 U.S. at 476, and since there have been no other new developments, we therefore simply incorporate the Union's argument by reference here.

CONCLUSION

For the above stated reasons, as well as those set out in the Union's brief, the judgment of the United States Court of Appeals for the Second Circuit should be affirmed.

Respectfully submitted,

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April, 1968

SUPREME COURT, U. S.

No. 891

APR 22 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1967

W. WILLARD WIRTZ, Secretary of Labor, United States Department of Labor,

Petitioner,

against

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENT'S SUPPLEMENTAL BRIEF

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RESPONDENT'S SUPPLEMENTAL BRIEF

The Secretary of Labor Has Conceded that Prior Service Requirements Are Reasonable

Respondent submits this supplemental brief to bring the Court's attention to certain relevant interpretations and rulings of the Department of Labor (now available to the public pursuant to the Public Information Act, Public Law 89-487) which came to our attention since the service and filing of our main brief.

In the LMRDA Interpretive Manual of the Department of Labor,* the Secretary has ruled that a qualification for candidacy which requires two years prior service on the executive board of a union in order to be eligible for

* Although the Secretary has made these rulings available to the public, we have been advised by the Secretary's office that he will not disclose the names of the people or organizations referred to or the dates upon which said rulings were promulgated.

executive office, although "such a provision does tend to severely restrict the number of people eligible for certain offices" is not per se unreasonable.

> "422.270 Two Years Membership on Executive Board
>
> A provision in the constitution of a local union which requires two years of membership on the executive board in order to be eligible for certain executive offices is not per se unreasonable.
>
> While such a provision does tend to severely restrict the number of people eligible for certain offices, we note that there is equal opportunity for all members of the local to become members of the executive board and thus become eligible for the specified offices."
>
> (*LMRDA Interpretive Manual,* U. S. Dept. of Labor, Section 422.270.)

These rulings cannot be reconciled with the position taken by the Secretary in this case (Sec. Brief, p. 14) that "... Congress * * * may be assumed to have taken as its model elections generally conducted in the United States"; and that

> "... it has not been the scheme of democracy in this country to insure competence by requiring prior public service on the part of candidates. The idea has instead been to place trust in the common sense and judgment of an informed electorate." (Sec. Brief, p. 17)

The above quoted ruling of the Secretary demonstrates that he agrees with Judge Hays in the Court below that "... it is not self-evident that basic minimum principles of union democracy require that every union entrust the administration of its affairs to untrained and inexperienced rank and file members" (A. 320).

In another ruling contained in the Interpretive Manual, the Secretary places his imprimatur upon qualifications for

candidacy which, as in the case at Bar, are ". . .. designed to assure that [the] candidates have participated in the affairs of the union and are sufficiently familiar with the industry in which the union operates. . . ."

> "422.250 Participation in Union Affairs
>
> Qualifications reasonably designed to assure that candidates have participated in the affairs of the union and are sufficiently familiar with the industry in which the union operates, would not be considered unreasonable in ordinary circumstances, if uniformly imposed. In the absence of knowledge of any special circumstances which cast doubt upon the validity and reasonableness of any of the qualifications they are not to be considered unreasonable in themselves."
>
> (*LMRDA Interpretive Manual,* U. S. Dept. of Labor, Section 422.250.)

The Court below held that it is not the Secretary's function to substitute his judgment for the judgment of the membership.

> "It is not the function of the Secretary to determine what prescribed qualifications for office will best serve the purposes of union democracy nor to dictate what policy unions should follow in limiting candidacy for union office. The union's own rules as to eligibility must prevail unless they impose unreasonable qualifications. We are persuaded that in the present case the Secretary has trespassed upon an area of union governance which is left by the statute to the union's decision." (A. 321)

These interpretive rulings of the Secretary further demonstrate that the Court below correctly held that the prior service requirement contained in the Union's By-Laws is reasonable within the meaning of the Act.

Respectfully submitted,

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Attorneys for Respondent.

SUPREME COURT OF THE UNITED STATES

No. 891.—October Term, 1967.

W. Willard Wirtz, Secretary of Labor, United States Dept. of Labor, Petitioner, v. Hotel, Motel and Club Employees Union, Local 6.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[June 3, 1968.]

Mr. Justice Brennan delivered the opinion of the Court.

This action was brought by petitioner, the Secretary of Labor, in the District Court for the Southern District of New York for a judgment declaring void the May 1965 election of officers conducted by respondent Local 6, and ordering a new election under the Secretary's supervision. The action is authorized by § 402 (b) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U. S. C. § 482 (b). The Secretary charged that a bylaw of the Local which limited eligibility for major elective offices to union members who hold or have previously held elective office [1] was not a "reasonable quali-

[1] The bylaw provided:

"In order to be eligible for nomination as an officer, a candidate must possess the following qualifications: (1) He must be a member of the Union in continuous good standing for a period of two years immediately preceding his nomination; (2) He must be a member of either the Assembly or the Executive Board, or else, at some time in the past, have served at least one term on either the Executive Board, the Assembly, or the old Shop Delegates Council. In order to be eligible for nomination as a member of the Executive Board, as a delegate to the Assembly, or as a department delegate, a candidate must be a member of the Union in continuous good standing for a period of at least one year immediately preceding his nomination."

fication" within the intendment of the provision of § 401 (e) of the Act, 29 U. S. C. § 481 (e), that "every member in good standing shall be eligible to be a candidate and to hold office (subject to . . . reasonable qualifications uniformly imposed) . . . ."[2] He charged further that enforcement of the bylaw "may have affected the outcome" of the election within the meaning of § 402 (c), 29 U. S. C. § 482 (c).[3]

The District Court, after hearing, entered a judgment which declared that the prior-office requirement was not reasonable, but also declared that it could not be found that its enforcement in violation of § 401 (e) "may have affected the outcome" of the election. The court therefore refused to set aside the May 1965 election and to order a new election under the Secretary's supervision, but did grant an injunction against enforcement of the bylaw in future elections. 265 F. Supp. 510. The Court of Appeals for the Second Circuit reversed the provision

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[2] Section 401 (e) provides in pertinent part:

"In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization of any member thereof. . . ."

[3] Section 402 (c) provides:

"If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

. . . . . .

"(2) that the violation of section 401 of this title may have affected the outcome of an election, the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. . . ."

of the judgment which declared the bylaw not to be reasonable and its enforcement violative of § 401 (e), and set aside the injunction.[4] The court found it unnecessary in that circumstance to decide whether enforcement of the bylaw at the election may have affected the outcome. 381 F. 2d 500. We granted certiorari. 390 U. S. 919. We hold that the restriction was not reasonable and that its enforcement may have affected the outcome of the election. The Secretary is therefore entitled to an order directing a new election under his supervision.

I.

Title IV is one of the seven titles of the Labor-Management Reporting and Disclosure Act (LMRDA). Earlier this Term, we observed that "Title IV's special function in furthering the overall goals of the LMRDA is to insure 'free and democratic' elections. The legislative history shows that Congress weighed how best to legislate against revealed abuses in union elections without departing needlessly from its long-standing policy against unnecessary governmental intrusion into internal union affairs." *Wirtz* v. *Local 153, Glass Bottle Blowers Assn.*, 389 U. S.

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[4] Judge Dimock dissented from the reversal of the declaratory judgment but concurred in the setting aside of the injunction. However, he did not join the majority in holding that the District Court was without power to enjoin future violations; his concurrence was "based upon the Secretary's concession of lack of power in the district court." 381 F. 2d, at 507. This issue is not before us.

The District Court did not consider other violations alleged in the complaint because no member of Local 6 had first invoked union remedies to redress them pursuant to § 402 (a). In light of our decision we need not consider the Secretary's argument that a member's protest triggers a § 402 enforcement action in which the Secretary may challenge any violation of § 401 discovered in his investigation of the member's complaint and brought to the attention of the union. Cf. *Wirtz* v. *Local 125, Laborers' Int'l Union*, 389 U. S. 477, 481–482.

463, 470–471. The Court of Appeals, however, in considering the reasonableness of the bylaw, emphasized only the congressional concern not to intervene unnecessarily in internal union affairs, stating that "[i]n deciding the issue of reasonableness we must keep in mind the fact that the Act did not purport to take away from labor unions the governance of their own internal affairs and hand that governance over either to the courts or to the Secretary of Labor. The Act strictly limits official interference in the internal affairs of unions." 381 F. 2d, at 504. But this emphasis overlooks the fact that the congressional concern to avoid unnecessary intervention was balanced against the policy expressed in the Act to protect the public interest by assuring that union elections would be conducted in accordance with democratic principles. As we said in *Wirtz* v. *Bottle Blowers, supra,* at 473, decided after the Court of Appeals decided this case, ". . . Congress, although committed to minimal intervention, was obviously equally committed to making that intervention, once warranted, effective in carrying out the basic aim of Title IV." Thus, ". . . the freedom allowed unions to run their own elections was reserved for those elections which conform to the democratic principles written into § 401." *Id.*, at 471. In a companion case, *Wirtz* v. *Local 125, Laborers' Int'l Union,* 389 U. S. 477, 483, we said that the provisions of § 401 are ". . . necessary protections of the public interest as well as of the rights and interests of union members." In sum, in § 401 ". . . Congress emphatically asserted a vital public interest in assuring free and democratic union elections that transcends the narrower interest of the complaining union member." *Wirtz* v. *Bottle Blowers, supra,* at 475.

A pervasive theme in the congressional debates about the election provisions was that revelations of corruption, dictatorial practices and racketeering in some unions in-

vestigated by Congress [5] indicated a need to protect the rights of rank-and-file members to participate fully in the operation of their union through processes of democratic self-government, and, through the election process, to keep the union leadership responsive to the membership. This theme is made explicit in the reports of the Labor Committees of both Houses of Congress.[6] It is

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[5] See Report of the Senate Committee on Improper Activities in the Labor or Management Field, S. Rep. No. 1417, 85th Cong., 2d Sess. (1958). See discussion in *Wirtz* v. *Bottle Blowers, supra,* at 469–470.

[6] ". . . Like other American institutions some unions have become large and impersonal; they have acquired bureaucratic tendencies and characteristics; their members like other Americans have sometimes become apathetic in the exercise of their personal responsibility for the conduct of union affairs. . . .

". . . [E]ffective measures to stamp out crime and corruption and guarantee internal union democracy, cannot be applied to all unions without the coercive powers of government . . . .

". . . Union members have a vital interest . . . in the policies and conduct of union affairs. To the extent that union procedures are democratic they permit the individual to share in the formulation of union policy. This is not to say that in order to have democratically responsive unions, it is necessary to have each union member make decisions on detail as in a New England town meeting. What is required is the opportunity to influence policy and leadership by free and periodic elections.

. . . . . .

"It needs no argument to demonstrate the importance of free and democratic union elections. . . . The Government which gives unions . . . power has an obligation to insure that the officials who wield it are responsive to the desires of the men and women whom they represent. The best assurance which can be given is a legal guaranty of free and periodic elections. The responsiveness of union officers to the will of the members depends upon the frequency of elections, and an honest count of the ballots. Guaranties of fairness will preserve the confidence of the public and the members in the integrity of union elections." S. Rep. No. 187, 86th Cong., 1st Sess., 6–7, 20 (1959); I Leg. Hist. 402–403, 416. And see H. R. Rep. No. 741, 86th Cong., 1st Sess., 6–7, 15–16 (1959); I Leg. Hist. 764–765, 773–774.

reflected in the discrete provisions of Title IV and also of Title I, the "Bill of Rights" for union members. 29 U. S. C. § 411. Title IV, and particularly § 401, was the vehicle by which Congress expressed its policy. That section prescribes standards to govern the conduct of union elections: International union elections must be held at least once every five years and local elections at least once every three years. Elections must be by secret ballot. Specific provisions insure equality of treatment in the mailing of campaign literature; require adequate safeguards to insure a fair election; guarantee a "reasonable opportunity" for the nomination of candidates, the right to vote, and the right of every member in good standing to be a candidate subject to "reasonable qualifications uniformly imposed," the guarantee with which we are concerned in this case. 29 U. S. C. §§ 481 (a)–(e). Furthermore, although Congress emphatically gave unions the primary responsibility for enforcing compliance with the Act, Congress also settled enforcement authority on the Secretary of Labor to insure that serious violations would not go unremedied and the public interest go unvindicated. See *Wirtz* v. *Bottle Blowers, supra; Wirtz* v. *Laborers' Union, supra; Calhoon* v. *Harvey,* 379 U. S. 134.[7]

Congress plainly did not intend that the authorization in § 401 (e) of "reasonable qualifications uniformly im-

[7] See, *e. g.,* S. Rep. No. 187, *supra,* n. 6, at 34; H. R. Rep. No. 741, *supra,* n. 6, at 26–27; I Leg. Hist. 430, 784–785.

For the general background and legislative history of the Act, see generally Aaron, The Labor-Management Reporting and Disclosure Act of 1959, 73 Harv. L. Rev. 851 (1960); Cox, Internal Affairs of Labor Unions Under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819 (1960); Levitan & Loewenberg, The Politics and Provisions of the Landrum-Griffin Act, in Regulating Union Government 28 (Estey, Taft & Wagner eds. 1964); Rezler, Union Elections: The Background of Title IV of LMRDA, in Symposium on LMRDA 475 (Slovenko ed. 1961).

posed" should be given a broad reach. The contrary is implicit in the legislative history of the section and in its wording that "every member in good standing shall be eligible to be a candidate and to hold office . . ." This conclusion is buttressed by other provisions of the Act which stress freedom of members to nominate candidates for office.[8] Unduly restrictive candidacy qualifications can result in the abuses of entrenched leadership that the LMRDA was expressly enacted to curb. The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents.

It follows therefore that whether the Local 6 bylaw is a "reasonable qualification" within the meaning of § 401 (e) must be measured in terms of its consistency with the Act's command to unions to conduct "free and democratic" union elections.

II.

Local 6 has 27,000 members, assets of $2,300,000, and assets in welfare, pension, and medical funds of some $30,000,000. The Local represents bartenders, maids, dining room employees, and kitchen employees of hotels, motels, and private clubs in New York. It is structured into six geographic districts, each with five craft departments, for hotel and motel employees, and a seventh district for private clubs. The various crafts have their own representatives in each hotel, motel, or club. An Assembly, composed in 1965 of 372 members, meets four times a year and is the basic representative body. The delegates are elected from among the craft units within

[8] See 29 U. S. C. § 481 (e): "a reasonable opportunity shall be given for the nomination of candidates . . ."; *id.*, § 411 (a)(1): "Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates . . . ."

each of the seven districts on the basis of one delegate for each 75 members of a craft. The Assembly in turn elects from its membership an Executive Board on the basis of one board member for each 500 members, augmented by principal officers and by nonvoting business agents, 31 of whom are elected from the seven districts and others who are appointed by the Assembly. The Executive Board meets monthly. There is also an Administrative Board made up of, in addition to general officers, seven district vice-presidents elected from the districts and elected or appointed delegates to the New York Hotel and Motel Trades Council. Finally there are four paid full-time general officers—President, Secretary-Treasury, General Organizer, and Recording Secretary, all elected by the membership at large. Terms of office are three years. In practice the affairs of the Local are administered by the general officers and the Administrative Board.

The bylaw under challenge [9] limited eligibility for positions as a general officer, district vice-president or elected business agent to members of either the Assembly or the Executive Board or members who, "at some time in the past, have served at least one term on either the Executive Board, the Assembly, or the old Shop Delegates Council." The Shop Delegates Council was abolished in 1951 and replaced by the Assembly. These qualifications apply, however, only to members who stand for election for office. Vacancies may not always be filled by elec-

[9] The Local has amended its bylaw to liberalize the candidacy requirements (making eligible department delegates and members of five years' good standing) and the amended bylaw was to govern an election scheduled for May 16, 1968. The District Court held the amended bylaw also unreasonable, but that ruling is not before us. 265 F. Supp., at 522–523. In any event, respondent's argument that the amendment renders this case moot is foreclosed by *Wirtz* v. *Bottle Blowers, supra,* at 475–476. See also *Wirtz* v. *Laborers' Union, supra,* at 479.

tion; the general officers may in such cases fill vacancies by appointment of members without prior office-holding experience, with the approval of the Executive Board and the Assembly.

By the terms of the bylaw, in the May 1965 election only 1,725 of the 27,000 members were eligible to run for office. Of these, 1,182, or 70%, were eligible only because of service on the Shop Delegates Council which had been abolished 14 years earlier. Thus, only 543 of the eligibles, some 2% of the membership, had at some time or other served at least a term in the Assembly, designated in the bylaws as "the highest body of the Union," since its creation in 1951.

Five elections were held between 1951 and 1965. All of them were won by the "Administration Party," whose slates were composed largely of incumbents. Until the May 1965 election there was only token opposition to those slates. Early in 1965, however, a "Membership Party" was organized. It attempted to field a slate of candidates to oppose the "Administration Party" slate for, among others, the four general offices and for 13 of the 27 vice-president and businesss agent posts. But enforcement of the bylaw disqualified the "Membership Party" candidates for the general office of Secretary-Treasurer and for eight of the district offices.[10] Other "Membership Party" nominees were disqualified for lack of good standing. In result, the "Membership Party" slate was reduced to candidates for the offices of President, General Organizer, and Business Agent in two districts. The "Administration Party" ran a full slate and elected its candidates by margins up to 7 to 1. Following the election, "Membership Party" members protested the validity of the bylaw and, after unsuc-

[10] For example, the "Membership Party" nominee for one of the vice presidencies was a department delegate (or shop steward) who had been active in his district council meetings; but he was ruled ineligible since he had not held office in the Assembly.

cessfully exhausting internal union remedies as required by § 402 (a)(1), filed the complaint with the Secretary of Labor as authorized by that section which in due course led to the Secretary's filing this action.

Plainly, given the objective of Title IV, a candidacy limitation which renders 93% of union members ineligible for office can hardly claim to be a "reasonable qualification." The practical effect of the limitation was described by the District Court:

> "In practice it was not possible to be elected to the Assembly except with the blessing of the Administration. Party conferred by selection to run for the Assembly on Row A [of a voting machine]. This was doubtless in large part because there was never a full slate of opposing candidates for the Assembly. The candidates to run on Row A for the Assembly were selected by the incumbent group of officers and were put in nomination after caucuses of invited members, attended by officers. It was only natural that candidates selected to run on Row A for the Assembly would be supporters of the administration. All candidates on Row A were pledged to support each other. Dissidents could not be elected to the Assembly. . . .
>
> "Since 1951 the only way new members could become eligible for office was to win election to the Assembly. But in this period the only candidates which won such election were those who ran on Row A, the administration ticket. The only way to run on Row A was to be selected by the administration. Thus, dissidents could not become eligible to be opposing candidates for office and effective opposition was thus sharply curtailed." 265 F. Supp., at 516, 520.

The Local attempts to defend the restriction as a "reasonable qualification" by citing the concededly impres-

sive record of the "Administration Party" in running the Local's affairs since 1951. There is no reason to doubt that the Local has enjoyed enlightened and aggressive leadership. But that fact does not sustain the Local's burden. Congress designed Title IV to curb the possibility of abuse by benevolent as well as malevolent entrenched leaderships.

The Local also argues that the high annual turnover in membership, the diverse interests of the various craft units and the multimillion-dollar finances of the Local justify the bylaws as a measure to limit the holding of important union offices to those members who have acquired a familiarity with the Local's problems by service in lesser offices. That argument was persuasive with the Court of Appeals, which said:

> "[I]t is not self-evident that basic minimum principles of union democracy require that every union entrust the administration of its affairs to untrained and inexperienced rank and file members. . . . It does not seem to us to be surprising that the union should hesitate to permit a cook or a waiter or a dishwasher without any training or experience in the management of union affairs to take on responsibility for the complex and difficult problems of administration of this union. . . .
>
> "We do not believe that it is unreasonable for a union to condition candidacy for offices of greater responsibility upon a year [*sic*] of the kind of experience and training that a union member will acquire in a position such as that of membership in Local 6's Assembly." 381 F. 2d, at 505.

That argument is not, however, persuasive to us. It assumes that rank-and-file union members are unable to distinguish qualified from unqualified candidates for particular offices without a demonstration of a candidate's performance in other offices. But Congress' model

of democratic elections was political elections in this country, and they are not based on any such assumption. Rather, in those elections the assumption is that voters will exercise common sense and judgment in casting their ballots. Local 6 made no showing that citizens assumed to make discriminating judgments in public elections cannot be relied on to make such judgments when voting as union members. Indeed the Local is not faithful to its own premise. A member need not have prior service in union office to be *appointed* to a vacancy in any office. Also, many members of the powerful Administrative Board become such by reason of their *appointments* as delegates to the New York Hotel and Motel Trade Council, another example of important officers who are not required to have had prior service. Moreover, as the District Court found, "once such an officer is appointed, he automatically becomes a member of the Assembly and immediately becomes eligible to run thereafter for any union office. This enables the incumbent group to qualify members for elective office by a procedure not available to dissidents." 265 F. Supp., at 520.

The bylaw is virtually unique in trade union practice. It has its counterpart in some other locals of this International Union but not in all; and it is not a requirement included in the International's constitution. Among other large unions only the International Ladies Garment Workers Union has a similar restriction, but that union provides members with the alternative of a union-conducted course in union management. Of 66 unions reporting receipts over $1,000,000 for 1964, only locals of ILGWU and Local 6 reported having this requirement.

Control by incumbents through devices which operate in the manner of this bylaw is precisely what Congress legislated against in the LMRDA. Cf. *Wirtz* v. *Bottle Blowers, supra,* at 474–475. Accordingly, we hold that the bylaw is not a "reasonable qualification" within the meaning of § 401 (e).

III.

The Secretary was not entitled to an order for a supervised election unless the enforcement of the bylaw "may have affected" the outcome of the May 1965 election, § 402 (c), 29 U. S. C. § 482 (c). The "may have affected" language appeared in the bill passed by the Senate, S. 1555.[11] The bill passed by the House, H. R. 8342, and the Kennedy-Ervin bill introduced in the Senate, S. 505, required the more stringent showing that the violation actually "affected" the outcome. The difference was resolved in conference by the adoption of the "may have affected" language.[12] Senator Goldwater explained,

> "The Kennedy-Ervin bill (S. 505), as introduced, authorized the court to declare an election void only

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[11] Senator Kennedy had introduced, and the Senate had passed, similar legislation in the 85th Congress which died in the House. Senator Kennedy's bill, S. 3751, included the "may have affected" language. In introducing the measure, he noted that "[i]f the United States District Court agrees with the Secretary that there has been a *substantial* violation of the provisions of the bill, then he shall void the election . . . ." 104 Cong. Rec. 7954. (Emphasis supplied.) The Senate-passed version, S. 3974, retained the language and the report on the bill said this:

"Since an election is not to be set aside for technical violations but only if there is reason to believe that the violation has *probably* affected the outcome of the election, the Secretary would not file a complaint unless there were also probable cause to believe that this condition was satisfied. . . . After a hearing on the merits the court would determine whether a violation had occurred which might have affected the outcome of an election." S. Rep. No. 1684, 85th Cong., 2d Sess., 13 (1958). (Emphasis supplied.)

Why Senator Kennedy modified the language in S. 505 is not explained.

[12] The Conference Report noted the change as follows:

"In subsection (c) of section 402, the conference substitute adopts the provision of the Senate bill that directs the court to set aside an election if the violation 'may have' affected the outcome. Under the House amendment an election could be set aside only if the

> if the violation of section 401 actually affected the outcome of the election rather than may have affected such outcome. The difficulty of proving such an actuality would be so great as to render the professed remedy practically worthless. Minority members in committee secured an amendment correcting this glaring defect and the amendment is contained in the conference report." 105 Cong. Rec. 19765.

The provision that the finding should be made "upon a preponderance of the evidence" was left undisturbed when the change was made. That provision is readily satisfied, however, as is the congressional purpose in changing "affected" to "may have affected" in order to avoid rendering the "proposed remedy practically worthless," by ascribing to a proved violation of § 401 the effect of establishing a prima facie case that the violation "may have affected" the outcome. This effect may of course be met by evidence which supports a finding that the violation did not affect the result. This construction is peculiarly appropriate when the violation of § 401, as here, takes the form of a substantial exclusion of candidates from the ballot. In such case we adopt the reasoning of the Court of Appeals for the Second Circuit in *Wirtz* v. *Local Union 410, et al., IUOE,* 366 F. 2d 438, 443:

> "The proviso was intended to free unions from the disruptive effect of a voided election unless there is a meaningful relation between a violation of the Act and results of a particular election. For example, if the Secretary's investigation revealed that 20 percent of the votes in an election had been tampered with, but that all officers had won by an 8–1 margin, the proviso should prevent upsetting the

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violation did affect the outcome." H. R. Conf. Rep. No. 1147, 86th Cong., 1st Sess., 35 (1959); I Leg. Hist. 939.

election. . . . But in the cases at bar, the alleged violations caused the exclusion of willing candidates from the ballots. In such circumstances, there can be no tangible evidence available of the effect of this exclusion on the election; whether the outcome would have been different depends upon whether the suppressed candidates were potent vote-getters, whether more union members would have voted had candidates not been suppressed, and so forth. Since any proof relating to effect on outcome must necessarily be speculative, we do not think Congress meant to place as stringent a burden on the Secretary as the district courts imposed here."

The District Court acknowledged that the issue was "governed by the teaching of *Wirtz* v. *Local Unions 410, etc.*" and correctly held that under its principle "a violation by disqualification of candidates does not automatically require a finding that the outcome may have been affected." 265 F. Supp., at 520–521. We cannot make out from the court's opinion, however, whether the violation was regarded as establishing a prima facie case that the outcome was affected. But if we assume that the court accorded the violation that effect, we disagree with its conclusion that the evidence met that case. The court cited the substantial defeat of those "Membership Party" candidates who did run, the lack of evidence that any of the disqualified nominees was a proven vote-getter, the lack of a substantial grievance or issue asserted by the "Membership Party" against the incumbents, and the overwhelming advantage enjoyed by the "Administration Party" of having a full slate of candidates. 265 F. Supp., at 521. We do not think that these considerations constitute proof supporting the court's conclusion. None of the factors relied on is tangible evidence against the reasonable possibility that the wholesale exclusion of members did affect the out-

come. Nothing in them necessarily contradicts the logical inference that some or all of the disqualified candidates might have been elected had they been permitted to run. The defeat suffered by the few candidates allowed to run proves nothing about the performance that might have been made by those who did not. The District Court properly perceived that the bylaw necessarily inhibited the membership generally from considering making the race, but held that any inference from this was disproved by "the heavy vote in favor of the administration candidates . . . ." *Ibid.* But since 93% of the membership was ineligible under the invalid bylaw, it is impossible to know that the election would not have attracted many more candidates but for the bylaw. In short, the considerations relied on by the court are pure conjecture, not evidence. We therefore conclude that the prima facie case established by the violation was not met by evidence which supports the District Court's finding that the violation did not affect the result.

The judgment of the Court of Appeals is reversed and the case is remanded to the District Court with direction to order a new election under the Secretary's supervision.

It is so ordered.

MR. JUSTICE MARSHALL took no part in the consideration or decision of this case.